Although we are mindful that the denial of a petition for writ of certiorari does not import an expression of opinion by this Court upon the merits of a case, we nevertheless take the view that the reasons leading to the denial of petitions for writ of certiorari in these proceedings and the denial of a petition for rehearing must, by necessity, still be applicable, since the issues are the same and the facts and circumstances and the effect and scope of the judgments of the Court of Appeals remain unchanged. Despite the inferences of Petitioners to the contrary, we are also of the view that this Court did not feel impelled to deny the petitions for writ of certiorari previously filed herein because the issues presented arose from so-called "non-final" judgments of the Court of Appeals. We do not believe this Court, by design or inadvertence, would tolerate the formulation of a new plan of reorganization based on conclusions of law which this Court refused to review and, after eighteen months of further litigation and very substantial expense to the debtors' estates and the parties, disturb these conclusions of law.

Petitioner in No. 774 complains of the action of the Court of Appeals in rejecting the claim or interest of the public stockholders of American. This contention deserves little comment, since it is clear that American, as well as the other debtors, is insolvent, and it is hornbook law that a stockholder of an insolvent debtor in a bankruptcy proceeding has no cognizable claim or interest against the debtor. The equities of the public stockholders of American have also been examined by the Court of Appeals on four occasions, and on each occasion the Court has rejected the interest of the public stockholders of American, *In re Inland Gas Corp.*, 211 F. 2d 381; 217 F. 2d 207;

241 F. 2d 374; .....F. 2d..... App. A, Pet. 765, p. 1a, and this Court also denied a petition for writ of certiorari raising the same equities here presented. 355 U. S. 838.

CONCLUSION

In view of the foregoing, it is respectfully urged that the issues in these proceedings do not warrant review by this Court on certiorari, because they do not present any important questions of federal law, and accordingly the petitions for writs of certiorari (Nos. 765, 7[illegible] and 774) to the decision of the Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

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March 18, 1959

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In the Supreme Court of the United States

OCTOBER TERM, 1958.

No. 765

CHARLES J. GREGORY, ET AL., PETITIONERS

v.

THE COLUMBIA GAS SYSTEM, INC., ET AL.

No. 766

PAUL E. KERN, PETITIONER

v.

THE COLUMBIA GAS SYSTEM, INC., ET AL.

No. 774

ELMO E. ALLEN, ET AL., PETITIONERS

v.

THE COLUMBIA GAS SYSTEM, INC., ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE SECURITIES AND EXCHANGE COMMISSION

OPINIONS BELOW

The opinion of the court of appeals (Kern 28b–30b)[1] is not yet reported. Earlier opinions of the

[1] "Kern" refers to the petition in No. 766; "Gregory," to No. 765; and "Allen," to No. 774.

court of appeals relevant to this proceeding are reported at 151 F. 2d 461 (partially set forth at Allen 21–28); 187 F. 2d 813 (partially set forth at Allen 30–33); and 241 F. 2d 374 (Kern 7b–27b).

JURISDICTION

The judgment of the court of appeals was entered on January 15, 1959. The petitions for writs of certiorari were filed on March 13 (Nos. 765 and 766) and 14 (No. 774), 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether in a reorganization under Chapter X of the Bankruptcy Act an unsecured creditor may be allowed post-petition interest before compensation of a creditor subordinated to it because of inequitable conduct. That question turns upon:

   (*a*) Whether general bankruptcy principles preclude payment of post-petition interest to an unsecured creditor before payment of creditors junior to it in priority.

   (*b*) Whether, if so, the general bankruptcy principles are applicable to Chapter X reorganizations.

   (*c*) Whether, regardless of the interest rules applicable to contractual priorities, a reorganization court may, under its general equitable powers, subordinate the claims of a wrongdoing creditor to the claims of other creditors for post-petition interest as well as for principal.

2. Whether the claims of the wrongdoing creditor in this case should have been rejected entirely and, if

not, whether the court has power to subordinate them in part to the interests of public stockholders as well as to claims of creditors.

STATUTE INVOLVED

Pertinent provisions of the Bankruptcy Act (52 Stat. 840, 11 U.S.C. 1, *et seq.*) are set forth at Kern 1b–6b.

STATEMENT

This case arises out of proceedings under Chapter X of the Bankruptcy Act (11 U.S.C. 501, *et seq.*) involving the debtors Inland Gas Corp. ("Inland"), Kentucky Fuel Gas Corp. ("Kentucky"), and American Fuel and Power Co. ("American").[2] The Securities and Exchange Commission is a party to the proceedings pursuant to § 208 of the Bankruptcy Act (11 U.S.C. 608). These proceedings are a continuation of proceedings under former § 77B of the Bankruptcy Act, which in turn succeeded equity receiverships of the debtors that had been instituted in 1930 and 1931.

It has previously been established that the receivership proceedings had been caused by Columbia Gas and Electric Corporation (since renamed the Columbia Gas System, Inc. and referred to herein as "Columbia"), a respondent in each of the petitions. Columbia had obtained control of the debtors in order to prevent their competition with certain of Columbia's subsidiaries. See *Columbia Gas & Elec-*

[2] Problems arising in these proceedings were considered by this Court in *Vanston Bondholders Protective Committee* v. *Green*, 329 U.S. 156. See also *Columbia Gas & Electric Corp.* v. *American Fuel and Power Co.*, 322 U.S. 379.

tric Corp. v. *United States,* 151 F. 2d 461. The opinion in that case, approving numerous findings of the district court, is (unless otherwise indicated) authority for the facts set forth in this memorandum.

Inland and Kentucky were incorporated in 1927 and 1928, respectively, to produce natural gas and acquire gas properties. They were financed by the public sale of their debt securities. American was organized in 1928 as a holding company to consolidate operations and management. Its debt securities were also sold to the public and its common stock was exchanged for common stock of Inland and Kentucky. These companies, together with several small corporations wholly owned by American Fuel, constitute the American Fuel system, which has at all times been operated as an integrated enterprise.

Prior to the organization of this system, Columbia had virtual freedom from competition in the field occupied by its subsidiaries in Kentucky, Ohio, and West Virginia. Thereafter it lost certain of its large industrial customers to the American Fuel system. In January 1930, having noted that Inland and Kentucky Fuel had sustained substantial operating losses and that default upon their bonds might be anticipated, Columbia began to purchase Inland and Kentucky bonds on the open market, so that it would be in a position to force foreclosure and sale of their properties. These purchases continued until Columbia had acquired in excess of 25% of the bonds of both companies.

Meanwhile, Hope Engineering Co., which had been supervising and managing the operations of Inland

and Kentucky Fuel, determined that the only hope of survival of the American Fuel system was by financing a large expansion of its business. Together with two other companies, it formed a syndicate to construct a natural gas transmission line to Detroit, which was not then served with natural gas. The syndicate agreed to provide funds sufficient to prevent immediate default on the obligations of American, Inland, and Kentucky. The syndicate acquired a majority of American's common stock, giving it control of the system. As the court below previously noted (151 F. 2d 461, 464): "The Syndicate was considered to be a combination of sufficient financial strength and business experience to foreshadow success of the Detroit project and so prevent the impending financial collapse of the American Fuel System."

Shortly thereafter, Columbia, which had also planned to supply natural gas to the Detroit area, purchased the syndicate's entire holdings in the American Fuel system, giving the syndicate a clear profit of $350,000, as well as agreeing to hold its members harmless by reason of obligations they had undertaken, and otherwise obligating itself to Hope Engineering Company in a manner which it ultimately settled by the payment of $400,000. Upon obtaining control, Columbia brought about receivership proceedings and the American Fuel system's Detroit project was abandoned.

The court below found "that the Detroit line would have served American Fuel and its subsidiaries, and in its successful completion lay their only hope for escape from impending financial disaster." 151 F.

2d at 468. It added (*id.* at 469): "The prospect of recovery and possible profit in what may now seem to have been initially an improvident investment by security holders, lay in the achievement by American Fuel and its subsidiaries of an expanded market to be opened up by the Detroit pipeline. The realization of their hopes was forever destroyed by the activities of Columbia in assuming control of the American Fuel system, terminating further pursuit of the Detroit plan and placing the companies in receivership."

By reason of Columbia's activities, the court determined that its securities must be subordinated to those of other creditors of every class of the American Fuel system (*id.* at 470). The instant petitions raise questions as to the maximum limits of this subordination.*

Substantially all the physical assets in the system are those held in Inland. 72.6% of Inland's stock is held by American; 26% by Kentucky; and 1.4% by public stockholders. In recent years, Inland's properties have greatly increased in value. Inland's first mortgage bonds, other than those held by Columbia, have been paid in the amount of approximately $2,650,000 principal and $2,600,000 interest. Also, more recently, the holders other than Columbia of Inland's debentures and gold notes, secured by a second

The court had earlier indicated that Columbia's claims should be rejected (122 F. 2d 223) but later directed subordination instead (151 F. 2d 461). The extent of the subordination of Columbia's securities has been involved in *Columbia Gas & Electric Corp.* v. *United States*, 153 F. 2d 101, certiorari denied, 329 U.S. 737; *In the Matter of Inland Gas Corp.*, 187 F. 2d 813; and *In re Inland Gas Corp.*, 211 F. 2d 381, certiorari denied, 348 U.S. 840; *In re Inland Gas Corp.*, 217 F. 2d 207.

mortgage, have been paid in full by payments of approximately $1,530,000 principal and $2,236,000 interest. In addition, during the course of the proceeding, approximately $870,000 in interest was paid on the publicly-held bonds of American and approximately $400,000 was paid on Kentucky's bonds, which latter payment for purposes of the current plan has been treated primarily as a payment on account of principal.

As of December 31, 1957, assuming interest at the contract rate, the claims of the publicly-held bonds and debentures of Kentucky consisted of $2,448,701 principal and $4,343,716 interest. The claims of the publicly-held American bonds and debentures consisted of $1,905,100 principal and $2,800,497 interest. Columbia has claims against Inland consisting of $2,143,367 principal and $3,646,083 interest, as well as substantial claims against American and Kentucky. The total claims against the several companies are tabulated in the Appendix, *infra*, p. 30.

The decision of the court below dismissed appeals from an order of the district court (Gregory 1a–3a) confirming a plan of reorganization and affirmed the judgment of the district court (Kern 28b–30b). The plan provides for (*a*) payment to the public security holders of American of principal and interest on their claims to the date of payment; (*b*) payment of principal on the claims of Kentucky's public security holders but no interest except for $17,615 in default prior to the receivership; and (*c*) the balance of the estate to go to Columbia through the issuance of new common stock in a reorganized company. No participation is accorded to the 1.4% of Inland stock

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which is publicly held or to public stockholders of American. The plan is predicated upon a valuation accepted by the court of $10,538,781 for Inland, as at December 31, 1957, which, together with certain assets of American, makes a total valuation somewhat in excess of $11,000,000[4] (S.E.C. Corp. Reorg. Rel. No. 109 (1958), pp. 15, 18–30).

In dismissing the appeals from the order of the district court, the court below stated that the district judge properly applied the principles stated in the court's opinion at 241 F. 2d 374 (Kern 29b), from which Chief Judge Simon had dissented.

DISCUSSION

I

In the earlier proceedings in this case, the court below had held that the public Kentucky creditors (bond and debenture holders) were to be treated as unsecured creditors of Inland and that the claims of Columbia against Inland, although not rejected, were to be subordinated to their claims (as well as to those of American's public creditors). Accepting the case in that posture, the holding on the present appeal that the Kentucky creditors are to receive only principal before the subordinated claims of Columbia are paid presents, we believe, questions of fundamental importance to the administration of Chapter X reorganization proceedings.[5]

[4] The Commission's over-all system valuation as at that date was approximately $1,000,000 higher than that adopted by the court.

[5] These questions were involved in petitions to this Court in the October 1957 Term, which were denied at 355 U.S. 838. At that time we noted that the judgment of the court of appeals

Relative priorities among unsecured creditors were seldom encountered in the historical development of bankruptcy law—creditors of both individuals and corporations were traditionally either secured or unsecured and sub-priorities typically existed only among the secured class (lienholders, first and second mortgagees, etc.). Today, however, relative priorities among unsecured creditors are encountered with increasing frequency, not only, as here, through the application of the equitable remedy of subordination but, even more importantly, through the increased use of contractual priorities in corporate financial structures (*e.g.*, the issuance of senior and junior unsecured debentures).[4] Thus, the question of the relative rights in reorganization proceedings of unsecured

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sought to be reviewed, insofar as it dealt with the question of post-petition interest, was "undoubtedly 'non-final' in the sense that the decision contemplates a remand for purposes of formulation of a new plan." Memorandum for the Securities and Exchange Commission, Nos. 241, 325, 336, 342, October Term, 1957, p. 17. We also stated that there was some doubt "whether the question of subordinating Columbia's claims to stockholder claims" (see Point II, *infra*) was "properly presented," pointing out that there was "no basis for assuming that the court below passed on any question relating to the relative priorities of Columbia and the stockholders." *Id.* at 22.

[4] See, *e.g.*, *Columbia Gas System, Inc.*, 35 S.E.C. 552, 566–567 (1954). See also § 302(a) of the Small Business Investment Act of 1958, 72 Stat. 692, empowering the Small Business Administration to purchase the debentures of authorized small business investment companies, which debentures "shall be subordinate to any other debenture bonds, promissory notes, or other obligations which may be issued by such companies * * *."

creditors of different priorities is one of recurring, and growing, importance.

The basis for the decision below was that (1) under traditional bankruptcy rules an unsecured creditor was not entitled to interest accruing after the date of the bankruptcy petition ("post-petition interest") even before payment of creditors junior to it in priority; (2) the same rules apply to Chapter X reorganizations; and (3) the fact that the junior creditor here was one whose claims had been subordinated for inequitable conduct does not permit the usual interest rules to be varied. While we question the validity even of the first proposition, it is with the latter two that the Commission, in its participation in reorganization proceedings, is primarily concerned, and of those we believe that neither is sound.

1. The starting point for the court's decision was that under the "common law" bankruptcy rule an unsecured creditor, even if having a contractual priority over other unsecured creditors, was not entitled to the payment of post-petition interest prior to the payment of other creditors. Since in our view special considerations are applicable to this question in Chapter X reorganization proceedings (see *infra*, pp. 14–19), what the common-law rule may have been is not, we think, controlling. It is important to note, however, that the court's view of the common law is at best highly dubious and there is little, if any, evidence that the common-law interest rule was ever so applied to creditors of different rank.

Interest is of importance in bankruptcy for its effect upon both "intra-class" rights and "inter-class"

rights, and the two problems are entirely distinct. When creditors of equal priority claim a fund which is insufficient to satisfy their claims in full, the "interest" question is simply whether the fund should be divided among them in proportion to their principal claims or in proportion to their claims for principal plus post-petition interest. To the extent that interest accrues on the several claims at different rates, allowance of interest would cause a continuous (though relatively insignificant) change in the ratio of the claims to each other and hence in the creditors' proportional participation. Disallowance of interest for that purpose would avoid the continuous recomputation of the proportional rights in each distribution and would normally not affect substantial rights, particularly during a short period of administration. In effect, it would simply give priority, within the class as a whole, to the debts accrued on the date of bankruptcy. In determining "inter-class" rights, however, the question is one of the respect to be accorded the contractual priorities between the classes—*i.e.*, whether a junior class may participate in the assets before a senior class has been compensated in full by payment of both principal and interest to the date of payment.

The traditional bankruptcy rule is normally stated as being that interest does not accrue after the date of bankruptcy, without distinction being made between intra- and inter-class questions. We believe, however, that an examination of the historical development of the rule will show that it has been consistently applied only in determining intra-class rights and that there is

no established body of precedent disallowing post-petition interest as between classes of different priorities.

The explanation of that result is that, while the "rule" has been stated in absolute terms, "exceptions" to it have been recognized whenever application of the rule would impair priorities and affect inter-class rights. The established exceptions to the rule allow post-petition interest to be paid (*a*) to secured creditors to the extent of their security (and hence of their priority) and (*b*) to unsecured creditors before any payment is made to the bankrupt or the stockholders. *New York* v. *Saper*, 336 U.S. 328, 330 n. 7; *Ticonic National Bank* v. *Sprague*, 303 U.S. 406, 413. Within the class of secured creditors, moreover, interest is allowed to a senior lienor before participation by a junior lienor. *R.F.C.* v. *Denver & Rio Grande W. R. Co.*, 328 U.S. 495, 502–503 n. 6, 517. Post-petition arrearages on cumulative preferred stock are also allowed in reorganizations before participation by common stockholders. E.g., *Petition of Portland Electric Power Co.*, 162 F. 2d 618 (C.A. 9), certiorari denied, 332 U.S. 837. From these exceptions, therefore, it is established that the order of payment to security holders under traditional bankruptcy principles is:

(a) principal, then interest, to senior secured creditors;

(b) principal, then interest, to junior secured creditors;

(c) principal, then interest, to unsecured creditors;

(d) liquidation preferences and arrearages to preferred stockholders; and

(e) common stockholders.

Since, as noted above (p. 9), that order of payment encompasses all of the general priorities among security holders normally involved in bankruptcy, it is apparent that the general scheme of distribution under the traditional rules, whether denominated "exceptions" or otherwise, gave full recognition to contractual priorities in the allowance of post-petition interest. While it is true that there is no established "exception" specifically allowing interest to the senior of two classes of unsecured creditors having different contractual priorities (*e. g.*, senior and junior debentures), it is equally true that there is no established body of law denying interest in that context.

In holding that an exception could not be recognized to allow interest as between unsecured creditors of different rank, the court below relied solely on this Court's decision in *New York* v. *Saper*, 336 U.S. 328, that post-petition interest was not allowable on tax claims given statutory priority. The question was there presented to the Court, however, solely in terms of whether tax claims were entitled to special treatment in that respect under the applicable statutes, or whether Congress intended, by a change in the Bankruptcy Act, to assimilate such claims, for purposes of post-petition interest, to the status of ordinary debts in bankruptcy (*i.e.*, with the statutory priority being limited to the amount of the claim on the date of bankruptcy). If the opinion reflects an assumption that a private creditor having a general contractual priority would not be entitled to interest before payment of junior creditors (though it does not allude to that problem), it is a sufficient explan-

ation, we submit, that that question was neither argued to the Court nor expressly discussed by it. In any event, the question whether a priority imposed upon the estate by statute should be extended to include post-petition interest turns on considerations quite different from those involved in protecting priority rights bargained for by the investing public or arising from subordination of a creditor because of inequitable conduct. The *Saper* case cannot be read as having resolved the latter questions.

In our view, therefore, there is no established rule of bankruptcy compelling the disallowance of post-petition interest between unsecured creditors of different contractual priorities. Without debating which is in reality the "rule" and which the "exception," we submit that the disallowance of interest was firmly established as a "fundamental principle" (*Sexton* v. *Dreyfus*, 219 U.S. 339, 344) only in allocating a limited fund among creditors of equal rank and that contractual priorities between classes of creditors were generally recognized by the allowance of post-petition interest to senior claimants before payment of junior claimants. What the rule should be in determining the respective rights of unsecured creditors having different priorities is an open question.

2. Even assuming, however, that the traditional bankruptcy rule would have denied post-petition interest to a senior unsecured creditor, there remains the important question whether that rule, developed in the context of straight bankruptcy, has any application to reorganizations under Chapter X. See, *e.g.*, Note, ***Post-Bankruptcy Interest in Chapter X Reor-***

ganizations, 67 Yale L.J. 1131; Note, *Allowance of Post Petition Interest During Reorganization Proceedings Under Chapter X of the Bankruptcy Act,* 33 N.Y.U.L. Rev. 863; 6 Collier, *Bankruptcy* (14th ed.) ¶9.08; Finletter, *The Law of Bankruptcy Reorganization,* 300–303 (1939).

The fundamental distinction between bankruptcy and Chapter X reorganizations is that bankruptcy is directed to liquidation while reorganization looks to the continuation of the business. The purpose of bankruptcy is the winding up of the debtor's business and its discharge from creditors' claims. There is no machinery for maintaining the business as a going concern, and the sole object is the prompt liquidation of the bankrupt's assets and the distribution of the proceeds among the creditors. Distributions are made periodically as cash is realized; final distribution of the assets is normally made within a comparatively short period after the institution of the proceedings; and the creditors often receive but a small fraction of their claims.

Reorganization under Chapter X, on the other hand, looks to the corporation's rehabilitation and the preservation of the business as a going concern. The business continues to be operated under trusteeship during the reorganization and may produce, as here, a substantial increase in the debtor's assets. Some period of operation is necessarily required for an appraisal of the business' earning power and of the feasibility of reorganization, and the period of administration is frequently of prolonged duration.

There are many respects in which the differences

between the two kinds of proceedings make the reasons for the bankruptcy interest rule inapplicable to reorganizations. Thus, Mr. Justice Holmes' justification of the rule denying post-petition interest in bankruptcy that it "simply fixes the moment when the affairs of the bankrupt are supposed to be wound up" (*Sexton* v. *Dreyfus*, 219 U.S. 339, 344) can have no application to a reorganization the purpose of which is to continue the business rather than wind up its affairs. So also the "administrative inconvenience of continuous recomputation of interest" which has been suggested as a reason for the denial of post-petition interest in bankruptcy (*Vanston Bondholders Protective Committee* v. *Green*, 329 U.S. 156, 164) arises from the requirement in bankruptcy of periodic distributions as assets are converted to cash, a requirement not applicable in reorganizations.

The most important, and in our view controlling, difference, however, is that the debtor's assets in bankruptcy constitute a "dead fund" (*Ex parte Bennet*, 2 Atk. 527 (1743)) which is to be simply liquidated and divided among the creditors. The assets are normally unproductive during the delay incident to liquidation, and it is perhaps not unreasonable to require the burden of delay to be borne equally by all the creditors by not allowing interest to any. If interest were allowed, the delay would simply change the distribution of the fund without increasing its size. In reorganization, however, the assets which would in bankruptcy have been distributed outright to the senior creditors are retained by the trustee and used to continue the business in operation during the

reorganization. Profits earned during that operation will be available for other creditors and the losses, if any, must be borne by the senior creditors, all of whose claims might have been satisfied by an immediate liquidation of the business. In this context interest is in no sense a "penalty" for the delay in payment but is simply fair compensation to the senior creditors for the productive use by the estate of the assets owing to them.

That the denial of interest during reorganization proceedings is manifestly unfair to the senior creditors is fully demonstrated by the facts of this case. Five years ago, a plan was finally approved under which Columbia was to receive nothing on its subordinated claims and the residual estate was to have gone to the Kentucky Fuel creditors. Because of an increase in the value of the estate pending the appeals from the plan, the plan was never consummated. Under the present plan, the Kentucky Fuel creditors, whose claims have gone unpaid for almost thirty years, are to receive no interest for the intervening period, and Columbia is to receive, on its subordinated claims, the primary benefit of the increase of assets resulting from the continued operation of the business since the last plan was approved.

For these reasons, it is our view that at least in reorganizations—even if not in straight bankruptcy—the rule of absolute priority, requiring that each security holder be compensated for his "entire bundle of rights" before juniors may participate, makes it essential that post-petition interest be given "the

same priority as the principal." *Consolidated Rock Products Co.* v. *Du Bois,* 312 U.S. 510, 527, 528. While that case in fact involved secured creditors, the absolute priority rule applies equally to all levels of priorities and it is immaterial whether the priority arises by virtue of security or otherwise. Any other rule would make the rights of a class of creditors depend upon the nature of the claims junior to it. A debenture-holder would be entitled to post-petition interest during the reorganization if followed in priority only by stockholders but would not be if followed by junior debenture-holders. Allowing the creation of a junior debenture issue so to alter the rights of the senior debenture-holders would, we submit, be a clear violation of the absolute priority rule.

The question of the application of bankruptcy rules to Chapter X reorganizations has never been expressly considered by the Court and remains unresolved. In *Group of Investors* v. *Milwaukee R. Co.,* 318 U.S. 523, 573, the Court, in dealing with one minor issue in the case, assumed without discussion the applicability to Chapter X reorganizations of the bankruptcy rule disallowing interest in apportioning a limited fund among a single class of creditors (*i.e.,* in determining intra-class rights). In *Vanston Bondholders Protective Committee* v. *Green,* 329 U.S. 156, 163–164, the Court, in holding that the allowance of interest on interest in a Chapter X proceeding would be inequitable, implied in dictum that the bankruptcy interest rules were equally applicable to such proceedings, but again without express consideration of the possible differences

between the two kinds of proceedings and also without adverting to the particular problem of the treatment of interest between creditors of different priorities. The only decision of the Court actually disallowing interest on a claim of senior priority in a Chapter X reorganization is the per curiam decision in *United States* v. *Edens*, 342 U.S. 912, disallowing interest on a tax claim on the authority of *New York* v. *Saper, supra*. As noted above in the discussion of the *Saper* case (*supra*, pp. 13–14), the problem of interest on tax claims involves considerations quite distinct from those involved in preserving contractual priorities, and the decision in *Edens* cannot be taken, we believe, as resolving the general question of the applicability of bankruptcy rules to reorganization proceedings in other contexts.

3. Finally, whatever may be the proper rule as between creditors of different contractual priorities—by which the court below thought itself bound—there remains a question whether the equitable remedy of subordination is flexible enough to permit a wrongdoing creditor to be subordinated to other creditors' claims for interest as well as to their claims for principal. Whether there is such a limitation on the power of subordination is of substantial importance in reorganization and bankruptcy proceedings, since problems whether and to what extent the securities of controlling persons should be subordinated arise with considerable frequency. They are bound to recur whenever a parent owns securities in its subsidiaries

of a superior or equal rank to those held by the public.'

In *Pepper* v. *Litton*, 308 U.S. 295, 305, it was made clear that the remedy of subordination, like other equitable remedies, is "invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done." Subordination is used to undo so far as possible the wrong committed when a controlling person uses "his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements." *Id.* at 311; see also *Taylor* v. *Standard Gas & Electric Co.*, 306 U.S. 307. As this Court stated in *Sampsell* v. *Imperial Paper & Color Corp.*, 313 U.S. 215, 219, "The power of the bankruptcy court to subordinate claims or to adjudicate equities arising out of the relationship between the several creditors is complete." See also *American United Mutual Life Insurance Co.* v. *City of Avon Park*, 311 U.S. 138, 146.

It is established by the prior proceedings in this case that Columbia's improper activities in prevent-

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[1] See, *e.g.*, cases cited at 3 Collier on *Bankruptcy* (14th ed.) ¶ 57.14, notes 6–7; ¶ 65.06, notes 1–2; 6 *id.*, ¶ 9.15, note 16. The extent of the application of this remedy is by no means fully reflected in the reported cases, since, in various Chapter X cases where there is no court opinion, approved plans reflect a determination or compromise of contentions that a parent's claim must be subordinated. Problems of subordination have also arisen frequently in reorganizations under Section 11 of the Public Utility Holding Company Act of 1935.

ing the opening of the Detroit market for the gas produced by the system companies put an end to their hope of profits and hence adversely affected all security holders of the system. Nevertheless, the court below deemed itself bound by the bankruptcy rules of interest to allow control of the enterprise to be returned to Columbia (by issuance of common stock in compensation for its subordinated claims against Inland) without interest having been paid to the public security holders of Kentucky—who have received substantially no interest since Columbia's inequitable activities—and without any determination having been made that the payment of principal alone to those creditors adequately compensates them for the harm inflicted by Columbia's inequitable conduct. It is our contention that, whatever the general rules of interest might be, the remedy of subordination is not so mechanical that that unjust result is required. Rather, the remedy is "complete" and the extent of subordination may vary depending on what is equitable under the circumstances. Just as subordination may be to less than the full principal of the injured creditors' claims where the maximum injury is ascertainable at some lesser amount (*e.g., In re Kansas City Journal-Post Co.*, 144 F. 2d 791, 800 (C.A. 8)), it may also be to the full amount of both principal and interest where the entire claims have been jeopardized by the parent's overreaching.

In denying its power to allow post-petition interest to unsecured creditors even as against a creditor subordinated to them because of wrongful conduct, the decision of the court below is in direct conflict with

the decision of the Tenth Circuit in *In re Deep Rock Oil Corp.*, 113 F. 2d 266, certiorari denied, 311 U.S. 699, a reorganization case which arose under former Section 77B of the Bankruptcy Act. There, on prior review in *Taylor v. Standard Gas & Electric Co.*, 306 U.S. 307, by reason of the wrongful management and exploitation of the debtor by the parent (Standard), this Court had reversed a lower court judgment approving a compromise plan under which public security holders were not participating in full prior to participation by Standard on an open account. On remand, Standard contended that, even as a subordinated creditor, it should participate in Deep Rock's assets since there was an equity for it of over $2,000,000 if the paramount position of the public noteholders and preferred stockholders should be limited respectively to the principal amount of the debt and the liquidating value of the preferred stock. In holding that Standard's claims were subordinated to both the interest and dividend arrearages, the Court of Appeals made clear that the noteholders were to be paid interest to the time of payment. In the instant case, Judge Miller, speaking for the majority, recognized that the *Deep Rock* case "lends some support" to the contention of the Kentucky Fuel creditors but stated that "such a contention appears to me to be expressly rejected by the Supreme Court in the City of New York v. Saper, supra, 336 U.S. 328." Quite apart from the other distinctions of the *Saper* case already suggested, it is clear that that case in no way involved equitable subordination or implied any limits on that power.

4. A final aspect of the decision below demonstrating the inequitable results of the court's mechanical application of the "bankruptcy rule" and its "exceptions"—although perhaps not in itself raising questions of general importance—is that it in fact *allows* post-petition interest to Columbia while denying it to the claims to which Columbia was subordinated.[8] That result was achieved on the ground that Columbia, although subordinated, was a "secured" creditor (its subordinated claims having been mortgage bonds) and thus came within the "exception" to the bankruptcy rule allowing interest to secured creditors. The underlying principle of that exception—the recognition and protection of *priorities*—is thus ignored and the allowance of interest is made to depend upon a characterization of the nature of the creditor's claim. Columbia is allowed interest because its claim was nominally "secured," notwithstanding that the other creditors have been given prior rights even to Columbia's security. In fact, of course, Columbia's security has been denied it for all practical purposes and the only remaining consequence of the security is unaccountably to entitle Columbia to interest prior to the dominant creditors.

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[8] As noted at p. 7, *supra*, the principal amount of Columbia's claims against Inland totals $2,143,367. Columbia, being the recipient of the residual equity under the plan, will receive securities valued by the district court at approximately $3,000,000, by the Commission at approximately $4,000,000 and by other experts at an amount beyond Columbia's total claims against Inland for both principal and interest. See S.E.C. Corp. Reorg. Rel. No. 109 (1958), pp. 20, 24–26, 30, 35.

II

As we have shown in Point I, there are serious doubts of the correctness of the decision below even accepting the basic scheme of distribution as previously formulated by the court—*i.e.*, with Columbia's claims not being rejected entirely and being subordinated only to the public creditors of the system (treated as creditors of Inland) and not to the public stockholders. The petition in No. 774 for the Allen Committee (representing the public stockholders of American) in addition challenges that basic scheme and contends that Columbia's claims should have been rejected outright in favor of the public stockholders who were equally injured by Columbia's unconscionable conduct. That petition, we believe, also raises questions of substantial merit.

The scheme of distribution embodied in the present plan was developed in this way: At a time when the assets of Inland were not sufficient to pay even the direct public creditors of Inland—so that subordination of Columbia was thought to have the same effect as rejection of its claims—the court of appeals, rather than resolve "academic" questions of its power to reject the claims (187 F. 2d 813, 815; Allen 31), directed that a proposed plan rejecting Columbia's claims be amended by limiting the remedy to subordination. 151 F. 2d 461, 469–470 (Allen 27–28). When it later appeared that the assets were more than sufficient for the direct public creditors of Inland, the court held, in accordance with the views of the Commission, that the subordination of Columbia's claims should also extend to

the public creditors of the holding companies, the surplus after payment of Inland's direct creditors being divided between the American creditors and the Kentucky creditors in proportion to the stock interests of those companies in Inland (American, 72.6%, and Kentucky, 26%). The court disagreed with the Commission's further recommendation that equal payments per share be made to the holders of the 1.4% of the Inland stock not held by the holding companies, since it thought those stockholders could not be assimilated to a "creditor" status. 187 F. 2d 813, 817 (Allen 32-33). When, still later, it appeared that the American creditors' 72.6% share of the Inland surplus would more than pay both principal and interest on their claims, the court held (adopting the views of the Commission) that the balance of that share should go to the Kentucky creditors rather than revert to Columbia. 211 F. 2d 381, 384. The court below has now held, as indicated in Point I, that the Kentucky creditors' participation should be limited to principal and that the balance should go to Columbia.

This order of distribution is, of course, premised upon the nonrejection of Columbia's claims. If, as the Allen Committee contends, Columbia's claims were rejected and the net Inland assets (after payment of the direct creditors of Inland) were distributed strictly according to the stock holdings in Inland, 72.6% of the Inland surplus would go to American, 26% to Kentucky, and 1.4% to the public stockholders of Inland. The 72.6% share going to American would be more than enough to pay the public creditors of American (who are also paid in full under the present

plan) and, with Columbia's claims as a creditor of American (as well as of Inland) also being rejected, the balance would go to the American stockholders. Since the court below has never expressly considered the relative equities of Columbia and of the public stockholders (in part at least because of the Topsy-like development of the distribution scheme), there is considerable merit to the American stockholders' contentions, and they ought also, we believe, to be reviewed by this Court.

In addition to the main contention of the Allen petition that Columbia's claims should be rejected entirely, there is a further question whether, if the claims are not rejected, the court below has power to subordinate those claims, at least in part, to stock interests as well as to creditor interests. This question has particular application to the rights of the public holders of 1.4% of the Inland stock, who are unrepresented in this proceeding. When the court held that Columbia should be subordinated to the claims of the public creditors of the holding companies (who were to participate in proportion to their companies' holdings of Inland stock), the Commission recommended that they should also be subordinated to the claims of the 1.4% stockholders to the extent of an equivalent per share distribution, pointing out that the equities of private owners of Inland stock were at least equal to those of creditors of the corporate owners of Inland stock. The court refused so to subordinate the claims to the Inland stockholders because the "holders of such stock were in no sense creditors." 187 F. 2d 813, 817. However, no creditor status is necessary

for application of the doctrine of subordination. See *Taylor* v. *Standard Gas & Electric Co.*, 306 U.S. 307, where subordination to preferred stock was required. The stockholders, as well as the creditors, were found to have been wronged by Columbia's conduct and the compensation of Columbia prior to any compensation of the injured stockholders is an anomaly which, we believe, is not required if the equitable power of subordination is to be given its full significance.*

The refusal of the court below to recognize the equities of the stockholders is particularly unfair in its effect upon the unrepresented public holders of 1.4% of the Inland stock. Having declined to reject Columbia's claims yet unwilling to see Columbia profit before the creditors of the other injured companies were compensated, the court allowed those creditors to participate in the Inland estate ahead of Columbia. While that solution was obviously equitable as between those creditors and Columbia, it

*The difference between subordination of a claim to stockholders and rejection of the claim is in reality but one of degree and not of kind. Unlimited subordination would be equivalent to rejection, since common stockholders have an unlimited claim. By the device of subordination, however, the court would have the power to limit the extent of the subordination to that appropriate under the circumstances and allow the creditor thereafter to participate—*e.g.*, by limiting the stockholders' prior participation to the amount of damage suffered by them if ascertainable. The original issue price of the stock or its highest market value might, for example, be an appropriate measure of the subordination in a given case. If the power of rejection exists, surely the lesser power of partial subordination also exists and gives to the courts as full power to do equity between injured stockholders and wrongdoing creditors as they have as between injured and wrongdoing creditors.

has had an unexpected effect upon the 1.4% minority stockholders of Inland. The increase in the Inland estate during the reorganization (and since the earlier rulings establishing the order of distribution) has been so great that now the minority Inland stockholders would be entitled to participate if Columbia had not been subordinated at all and had been paid in full on its claims.[10] The blurring of corporate lines in order to prevent Columbia from benefiting ahead of the creditors of the holding companies should not, we submit, be allowed to prejudice the rights of the innocent public stockholders of Inland, and for that reason also we believe that review of the decision below by this Court is appropriate.

[10] The unpaid direct claims against Inland, for both principal and interest and *including* Columbia's claims, totalled $6,752,664 as of December 31, 1957 (See Appendix, *infra*, p. 30). The court's valuation of the Inland estate as of that date was approximately $10,500,000 (see Statement, *supra*, p. 8), thus leaving a substantial equity for the Inland stockholders but for the subordination of Columbia's claims to those of the holding companies' creditors.

CONCLUSION

For the foregoing reasons the petitions for writs of certiorari should be granted.

Respectfully submitted.

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APRIL 1959.

APPENDIX

The claims including interest at the contract rate against Inland, Kentucky and American are, according to the certified balance sheets of the debtors, as follows:

	Principal	Interest to Dec. 31, 1957 [1]	Total claim to Dec. 31, 1957 [1]	Interest to Dec. 31, 1958	Total claim to Dec. 31, 1958
INLAND					
Advances due American	$335,986	$617,206	$953,192	$639,046	$974,[illegible]
Claims of general creditors	10,022		10,022		10,022
6½% First Mortgage Bonds held by Columbia	1,871,064	[2] 2,585,183	4,156,237	[2] 2,687,302	4,[illegible]
7% Second Mortgage Debentures held by Columbia	320,000	614,325	934,325	636,732	[illegible]
Unsecured claims for advances by Columbia	282,313	446,575	698,888	462,976	[illegible]
AMERICAN					
7% Gold Notes held by public	$1,906,100	$2,800,497	$4,705,597	$2,933,854	$4,[illegible]
7% Gold Notes held by Columbia	60,000	115,500	175,500	119,700	[illegible]
6% Demand Notes held by Columbia	552,000	907,808	1,459,808	940,928	[illegible]
Unsecured claims of Columbia	17,301		17,301		17,[illegible]
KENTUCKY					
6½% First Mortgage Bonds publicly held	[3] $1,906,701	$3,571,956	$5,478,657	$3,695,892	$5,[illegible]
6½% Debentures, publicly held	542,000	971,760	1,513,760	1,006,990	1,[illegible]
6½% First Mortgage Bonds held by Columbia	1,685,871	2,974,367	4,660,238	3,083,949	4,[illegible]
6½% Debentures held by Columbia	397,600	712,864	1,110,464	738,706	1,[illegible]
Unsecured claims for advances by Columbia	65,606	116,180	181,786	120,445	[illegible]

[1] This is the date of the reorganization value for the estate adopted by the district court and as of which the Commission made its valuation.

[2] The accountants' certificate attached to the audited balance sheet of Inland as of Dec. 31, 1957 and 1958, referred also to additional interest of $236,018 on distributions denied to Columbia.

[3] The original principal amount of the Kentucky bonds in the hands of public creditors aggregated $2,236,600. During the proceedings a payment, equal to 18% of the principal amount, or $402,[illegible] was made on the bonds. For plan purposes, the trustees have credited against defaulted interest, $72,689.50 and, since subsequent interest has been disallowed, the balance of the payment of $329,[illegible] has been applied in the reduction of the principal amount of bonds.

U. S. GOVERNMENT PRINTING OFFICE 1959

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Nos. 765, 766 and 774

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 765

CHARLES J. GREGORY, *et al.*,

Petitioners,

vs.

THE COLUMBIA GAS SYSTEM, INC., *et al.*,

Respondents.

No. 766

PAUL E. KERN,

Petitioner,

vs.

THE COLUMBIA GAS SYSTEM, INC., *et al.*,

Respondents.

No. 774

ELMO E. ALLEN, *et al.*,

Petitioners,

vs.

THE COLUMBIA GAS SYSTEM, INC., *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI

MOTION OF RESPONDENT THE COLUMBIA GAS SYSTEM, INC. FOR LEAVE TO FILE MEMORANDUM IN REPLY TO MEMORANDUM FOR THE SECURITIES AND EXCHANGE COMMISSION

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CRAVATH, SWAINE & MOORE,
JOHN F. HUNT, JR.,
DAVID J. MELAMED,
Of Counsel.

April 16, 1959

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Columbia Gas System, Inc., Respondent (Columbia), respectfully moves the Court for leave to file the attached Memorandum in Reply to the Memorandum for the Securities and Exchange Commission.

The petitions herein were filed by March 14, 1959, and all the briefs in opposition (including Columbia's) were filed by March 21. The Securities and Exchange Commission filed its Memorandum on April 14. That Memorandum supports each of the petitions and Columbia has not had an opportunity to reply.

Respectfully submitted.

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CRAVATH, SWAINE & MOORE,
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DAVID J. MELAMED,
Of Counsel.

April 16, 1959.

Nos. 765, 766 and 774

In the

Supreme Court of the United States

October Term, 1958

Charles J. Gregory, *et al.*, *Petitioners*, *vs.* The Columbia Gas System, Inc., *et al.*, *Respondents.*	No. 765
Paul E. Kern, *Petitioner*, *vs.* The Columbia Gas System, Inc., *et al.*, *Respondents.*	No. 766
Elmo E. Allen, *et al.*, *Petitioners*, *vs.* The Columbia Gas System, Inc., *et al.*, *Respondents.*	No. 774

MEMORANDUM OF RESPONDENT THE COLUMBIA GAS SYSTEM, INC. IN REPLY TO MEMORANDUM FOR THE SECURITIES AND EXCHANGE COMMISSION

I.

As to the applicability of the rule against post-bankruptcy interest to the senior class of two classes of unsecured creditors, the Memorandum for the Securities and

Exchange Commission (SEC Memorandum) states and restates (italics ours):

> ". . . there is little, if any, evidence that the common-law interest rule was *ever* so applied to creditors of different rank. (p. 10)
>
> ". . .
>
> ". . . We believe . . . that there is *no established body of precedent* disallowing post-petition interest as between classes of different priorities. (pp. 11-12)
>
> ". . .
>
> ". . . While it is true that there is no established 'exception' specifically allowing interest to the senior of two classes of unsecured creditors having different contractual priorities (*e.g.*, senior and junior debentures), it is equally true that there is *no established body of law* denying interest in that context." (p. 13)

This plainly is not so. In our Consolidated Brief in opposition to the 1957 series of petitions for certiorari (Nos. 325, 336 and 342, October Term 1957), we cited a number of decisions (not involving tax claims) expressly denying post-bankruptcy interest to the senior of two classes of unsecured creditors. We assembled these under a heading directly addressed to this point—

> "2. The 'fundamental principle' [against allowance of post-bankruptcy interest] is not altered by the fact that there are differences in rank between unsecured claims *inter sese*." (1957 Consolidated Brief, p. 16)

and we classified the cases according to the source of the priority enjoyed by the unsecured claims denied post-bank-

ruptcy interest, *viz.*; "Contractual Priority",* "Equitable Priority"** and "Statutory Priority".***

The entitlement of senior unsecured creditors to post-bankruptcy interest was a question briefed and argued at length to the Court of Appeals in 1957. Judge Miller's opinion for the court treated the arguments of the then appellants and SEC as "in effect" urging a fourth exception to the general rule, namely, that

> ". . . post-bankruptcy interest should be paid to an unsecured claim of a higher rank before any payment is made to a claim of a lower rank".

The many authorities referred to by Judge Miller in his opinion for the court† rejecting this proposition demon-

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*Decisions cited under this heading were:

Jamison v. *Federal Deposit Insurance Corporation*, 149 F. 2d 199 (5th Cir. 1945); *United States* v. *Paddock*, 187 F. 2d 271 (5th Cir. 1951); *FDIC* v. *Dep't of Financial Inst.*, 113 Ind. App. 14, 44 N. E. 2d 992 (1942); *Atlanta Nat'l Bank* v. *Four States Grocer Co.*, 135 S. W. 1135 (Tex. Civ. App. 1911); *Att'y General* v. *Supreme Council A. L. H.*, 206 Mass. 131, 92 N. E. 134 (1910).

**Decisions cited under this heading were:

Thomas v. *Western Car Co.*, 149 U. S. 95 (1893); *New York Trust Co.* v. *Detroit, T. & I. Ry.*, 251 Fed. 514 (6th Cir. 1918); *Application of Progress Shoe Co.*, 107 F. Supp. 114 (E. D. N. Y. 1952); *Farish* v. *Holley*, 244 Ala. 19, 12 So. 2d 88 (1943); *Squire* v. *American Express Co.*, 131 Ohio State 239, 2 N. E. 2d 766 (1936); *McGinnis* v. *Corporation Funding & Finance Co.*, 8 F. 2d 532 (M. D. Pa. 1925)

***Decisions cited under this heading were:

Missouri v. *Earhart*, 111 F. 2d 992 (8th Cir. 1940); *In re Pacific Coast Building-Loan Ass'n*, 15 Cal. 2d 134, 99 P. 2d 251 (1940); *Fulton* v. *B. R. Baker-Toledo Co.*, 128 Ohio State 226, 190 N. E. 459 (1934); *Taylor* v. *Corning B. and T. Co.*, 185 Ark. 691, 48 S. W. 2d 1102 (1932) *Leach* v. *Sanborn State Bank*, 210 Iowa 613, 231 N. W. 497 (1930); *Cosmopolitan Trust Co.* v. *Suffolk Knitting Mills*, 247 Mass. 530, 143 N. E. 138 (1924); *United States F. and G. Co.* v. *Carnegie Trust Co.*, 161 App. Div. 429, 146 N. Y. Supp. 804 (1st Dep't), *aff'd* 213 N. Y. 629, 107 N. E. 1087 (1914); *People* v. *American Loan and Trust Co.*, 172 N. Y. 371, 65 N. E. 200 (1902).

†*In re Inland Gas Corporation*, 241 F. 2d 374, 382 (6th Cir. 1957); Gregory-Vanston Petition App., p. 24a.

strate both that there is an "established body of precedent" on the question and that it is established squarely against the argument made by the SEC Memorandum.

II.

The SEC Memorandum (Point II, pp. 24-28) supports the Allen Petition (No. 781), which urges rejection of Columbia's claims in favor of the American stockholders. SEC gives no inkling of the frequency with which that issue has been urged on the courts below and the frequency with which, with full knowledge of their equitable power to reject, the courts have resolved it adversely to the American stockholders.* The Court of Appeals in its 1957 decision herein stated that

> "... Under the ruling in *Sampsell* v. *Imperial Paper and Color Corp.*, 313 U. S. 215 and *Pepper* v. *Litton*, 308 U. S. 295, the Court had authority to disallow the claim of Columbia..."

and, with respect to the arguments that such authority be exercised, said

> "... We have rejected these contentions in prior appeals. The Court in the present case is unanimous in its view that those rulings be adhered to..."**

Columbia Gas & Elec. Corp. v. *United States*, 151 F. 2d 461, 470 (6th Cir. 1945), *cert. denied*, 329 U. S. 737 (1946); *In re Inland Gas Corp.*, 187 F. 2d 813, 819-820 (6th Cir. 1951); *In re Inland Gas Corp.*, 211 F. 2d 381, 382-384 (6th Cir.), *cert. denied*, 348 U. S. 840 (1954); *In re Inland Gas Corp.*, 217 F. 2d 207, 208 (6th Cir. 1954); *In re Inland Gas Corp.*, 241 F. 2d 374, 381-382 (6th Cir.), *cert. denied*, 355 U. S. 838 (1957).

**In re Inland Gas Corporation*, 241 F. 2d 374, 382, Gregory-Vanston App., p. 24a.

III.

Point II of the SEC Memorandum also urges that the Allen Petition be granted to bring up for review questions relating to the public holders of Inland stock (for whom, Inland being insolvent, the Plan of Reorganization does not provide any participation). The principal question suggested is whether the District Court had power to subordinate Columbia's creditor claims to those Inland stockholders.

First. The Allen Petition on behalf of the stockholders of *American* could not properly present questions of the rights of the stockholders of *Inland*. In fact, neither the Allen Petition nor any of the Kentucky Petitions purports to present any such question. Questions of the rights of the public holders of the 1.4% Inland stock are questions raised and urged here by SEC only.*

Second. The power of the District Court to subordinate Columbia's creditor claims against Inland to the publicly-held Inland stock has not been denied by the District Court or by the Court of Appeals, and is not in question in these proceedings.** The 1961 opinion of the Court of Appeals, which recognized the power to subordinate creditor claims to stock in its formulation of the "quasi-creditor" doctrine, considered on the merits and upheld the entitlement of

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*It is to be noted that Section 208 of the Bankruptcy Act, in defining the role of the Securities and Exchange Commission in Chapter X proceedings, provides that ". . . the Commission may not appeal or file any petition for appeal in any such proceeding."

**The abstract and academic character of this question is emphasized by the fact, referred to by SEC, that the public holders of Inland stock "are unrepresented in these proceedings." (SEC Memorandum, p. 27) In so pointing out that no Inland public stockholder has appeared in these proceedings since the start of them in December, 1930, SEC itself suggests a good reason why—even if a question of Inland stockholder rights were presented by the record—review of it would not be appropriate.

Columbia's creditor claims vis-a-vis the publicly held Inland stock.* The basis for the refusal to subordinate Columbia's claims to the public stockholders of Inland is thus, not a misconception of powers, but a conception of the facts and of the equitable relief which they make appropriate.

Respectfully submitted,

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Of Counsel.

April 16, 1959

In re Inland Gas Corporation, 187 F. 2d 813, 816-817 (6th Cir. 1951).

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FILED
APR 20 1959

No. 774

IN THE

Supreme Court of The United States

OCTOBER TERM, 1958

ELMO E. ALLEN, ET AL.,
Petitioners,

v.

THE COLUMBIA GAS SYSTEM, INC., ET AL.,
Respondents.

REPLY TO BRIEFS IN OPPOSITION TO PETITION FOR CERTIORARI

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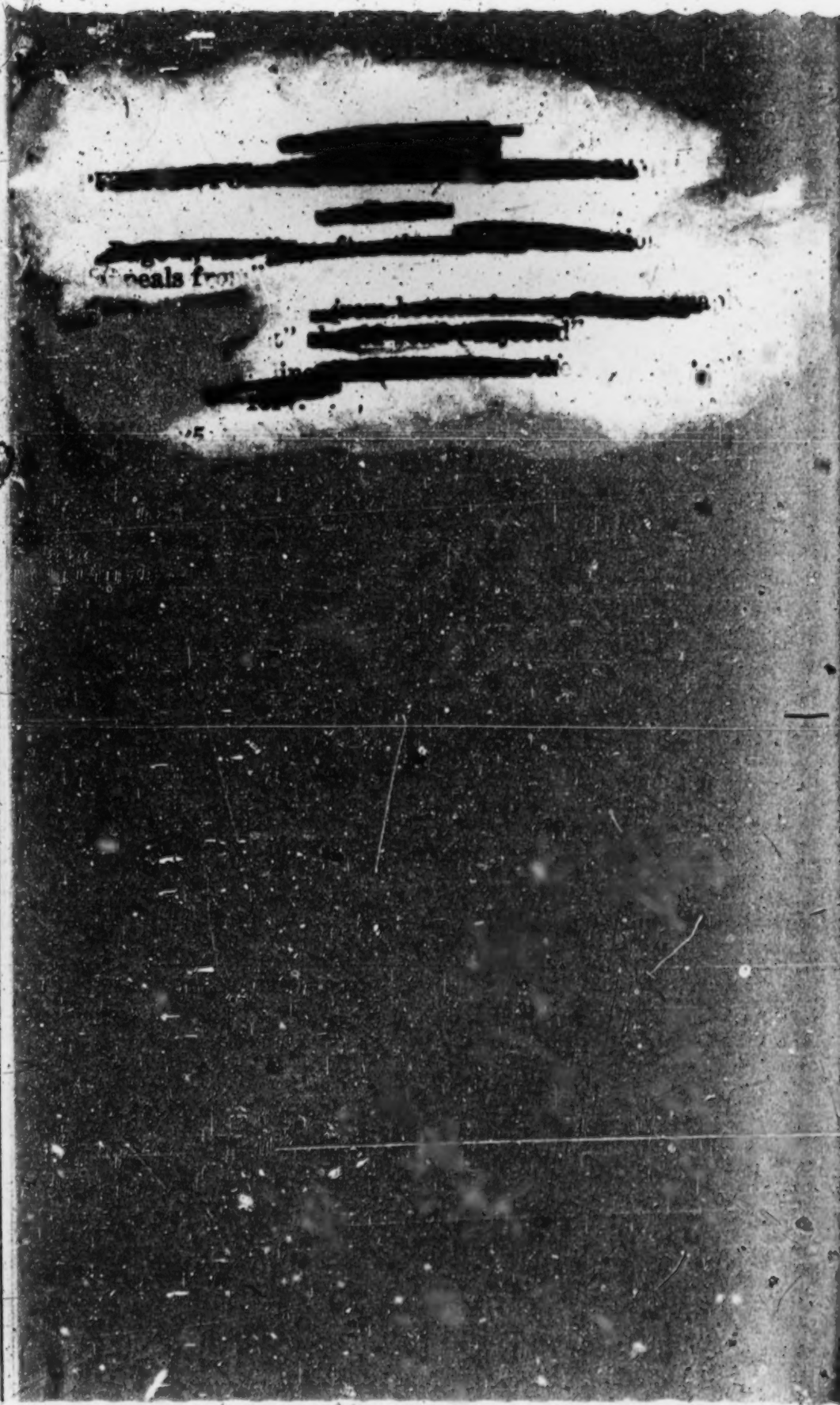

No. 774

IN THE

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Respondents.

REPLY TO BRIEFS IN OPPOSITION TO PETITION FOR CERTIORARI

Williamson, Trustee of Inland and Kentucky, and Columbia oppose the Petition for Certiorari of the Allen Committee, No. 774. This reply will consider briefs in opposition filed by these parties.

ARGUMENT

Neither Williamson nor Columbia argue that the Plan confirmed below is fair and equitable. Neither argue that the provisions of the Plan which give to Columbia the assets and business of the debtors follow principles of bankruptcy administration established

by this court. The argument is that because the Court of Appeals in the past has refused to disallow Columbia's claims, this court should not grant review to consider whether the decision of the Court of Appeals confirming the Plan violates essential equities and established principles of bankruptcy administration.

Williamson Brief

Williamson's first argument that public stockholders have no standing to question the decision below because all of the debtors are insolvent deserves little attention. Neither Inland nor American is insolvent by recognized accounting standards.[1] Insolvency is claimed only because American and Kentucky creditors are held to be quasi creditors of Inland. Public stockholders challenge this holding below and have the right to challenge it.

Williamson's statement that the court below has "rejected" the interests of public stockholders of American (on which he bases his next argument) is misleading. The courts below have never rejected public stockholders' interests as having no equity. These interests are now disallowed, as they have been in the past, since they are classified as inferior to claims of creditors which absorb all the assets of the debtors leaving nothing for stockholders.[2]

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[1] This is not denied by Columbia (Br. pp. 11, 12) or by Williamson (Br. pp. 3, 4). SEC recognizes this (Br. p. 28, ft. n. 10).

[2] Columbia's claims have also been disallowed. They were rejected for want of equity in 1941 and were disallowed in 1945, 1951 and 1954 because prior claims exhausted the debtors' assets. These decisions held that public creditor claims were superior to both Columbia's claims and stockholders' interests.

Columbia's Brief

Columbia's principal argument seems to be that the Court of Appeals' refusal "to repudiate its prior decisions" (Columbia's Brief, p. 20) is not an abuse of that court's discretion. But discretion is not involved here.

The Court of Appeals had no discretion to allow claims saturated with fraud, violation of fiduciary duties of majority stockholders to the minority and plain illegality. *Pepper* v. *Litton*, 308 U.S. 295. *Pepper* clearly establishes the power of the court to disallow Columbia's claims. But it does more. It establishes just as clearly that it is the DUTY of the bankruptcy court (not a discretionary power) to disallow such claims.

In *Pepper*, Justice Douglas, writing for the court, points out that a controlling stockholder (Columbia here) is a fiduciary. Its dealings with the corporation are subject to rigorous scrutiny and

> "• • • the burden is on the director or stockholder not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein. • • • If it does not, equity WILL set it aside. • • •" (308 U.S. 295, pp. 306, 307).[1]

Both the power and the duty of the bankruptcy court are expressly pointed out.

> "• • • In the exercise of its equitable jurisdiction the bankruptcy court has the power to

[1] All emphasis in quotations supplied.

> sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate. And its DUTY so to do is especially clear when the claim seeking allowance accrues to the benefit of an officer, director, or stockholder. That is clearly the power and DUTY of the bankruptcy courts under the reorganization sections. * * *" (*Id.*, pp. 307, 308).

Disallowance of claims WILL be ordered where they are fictitious or sham and

> "* * * a sufficient consideration may be simply the violation of rules of fair play and good conscience by the claimant. * * *" (*Id.*, pp. 310).

* * *

> "* * * Where there is a violation of those principles, equity WILL undo the wrong or intervene to prevent its consummation". (*Id.*, p. 311).

The duty of the court to weigh the equities in a case like this could hardly be made clearer. The retreat by the Court of Appeals behind "determinations previously, and repeatedly, made"[4] in order to avoid consideration of equities squarely conflicts with this court's decision in *Pepper*.

Stockholders' Equity

The equities of the American public stockholders are as clear as is the lack of equity in Columbia's claims. When Inland and Kentucky were in financial difficulties, American stockholders pledged all their stock in

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[4] 241 F. 2d 374, 381.

Inland and Kentucky to secure the American notes in order to obtain nearly $2,000,000.00 to pour into the Inland and Kentucky operations.[5] When default in debts became imminent, stockholders surrendered control of the debtors by issuing 76% of the American stock to the Syndicate in a final effort to save all three debtors and their creditors.[6] Neither American or its stockholders received a dollar in dividends or repayment of loans. In short, the stockholders, under no legal compulsion to do so, first put their entire holdings in the debtors at risk to protect the debtors and their creditors, and finally surrendered three-fourths of their interest to others when this became necessary. Stockholders' equities, so acquired, should be enforced.

Respondents' Plea for Finality

Columbia (Br. p. 6) and Williamson (Br. p. 5) argue that these proceedings have been in court for many years and since at last a plan has been confirmed, this court should not review. This argument was made below and could hardly have failed to appeal to the Sixth Circuit, which already had reviewed several plans of reorganization of the debtors and written at least eight opinions dealing directly with plans. We hesitate to urge that this court should not entertain a presumption that the courts below, thoroughly familiar with these proceedings, would refuse to sanction serious injustice in approving the Plan. We recognize that this court is not primarily a court for the correction

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[5] "The proceeds thereof (American note sale) were used to provide financial aid to the operating companies * * *." (151 F. 2d 461, 463; App. Allen Pet. p. 21).

[6] 151 F. 2d 461, 465; App. Allen Pet. p. 25.

of errors below and that even substantial injustice in the order below may not be sufficient to invoke its power of review. In all deference, however, we submit that this is an exceptional case. Before 1957 equitable considerations were held to bar Columbia. But on the 1957 and 1959 Appeals, utter weariness with this case and understandable dismay at the prospect of considering still another plan of reorganization could have dulled the sharp eye of the Court of Appeals in detecting serious departure from accepted equitable principles in reorganization which are present mainly because of the great increase in Inland's assets during bankruptcy.

CONCLUSION

The Petition for a Writ of Certiorari of the Allen Committee, No. 774, should be granted.

Respctfully submitted,

ROBERT S. SPILMAN, JR.
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111 Capitol Street
Charleston, West Virginia

Counsel for Petitioners
The Allen Committee and
Edward D. Spilman

April 16, 1959

LE COPY

Office-Supreme Court, U.S.
FILED
MAY 22 1959
JAMES R. BROWNING, Clerk

No. 774

IN THE

Supreme Court of The United States

OCTOBER TERM, 1958

ELMO E. ALLEN, ET AL.,
Petitioners,

v.

THE COLUMBIA GAS SYSTEM, INC., ET AL.,
Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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The Allen Committee and
Edward D. Spilman

May 22, 1959

No. 774

IN THE

Supreme Court of The United States

OCTOBER TERM, 1958

ELMO E. ALLEN, ET AL.,
Petitioners,

v.

THE COLUMBIA GAS SYSTEM, INC., ET AL.,
Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners Allen Committee and Edward D. Spilman pray that this Court grant rehearing of its Order of April 27, 1959, denying the Petition for Writ of Certiorari filed March 14, 1959, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Sixth Circuit in the above entitled case as prayed for in the original Petition.

Reasons for Granting Rehearing and Issuing the Writ

1. Since the order denying the Petition for Writ of Certiorari, the value of the debtors' assets has been determined conclusively to be $15,243,395 as opposed

to $10,538,800, the value used in the Plan sought to be reviewed. The $15,000,000 valuation is fixed by actual offers of solvent underwriters to underwrite the Reorganized Company with bonds and stock convertible to cash at the option of the stockholder in an amount which, when added to the debtors' assets, give that total.[1]

The new proposal fixing the $15,000,000 value must require revision of the present Plan. That Plan provides that the entire value of Inland after payment of the fixed dollar amounts allowed to American and Kentucky as quasi creditors of Inland will go to Columbia as a secured creditor of Inland. Under the present Plan and valuation of about $10,500.00, Columbia's secured claims will fall short of full payment by about $2,700,000[2]; but at the $15,000,000 valuation now established, the equity in Inland which Columbia will receive will be worth nearly $2,000,000 in excess of Columbia's entire claim against Inland. Surely the present Plan allowing to Columbia, as a creditor of Inland, assets worth more than its entire claim against Inland can not be consummated.

Since review of the present Plan must be had, the argument so forcefully made by Columbia and Williamson below and in opposition to the original Petition for Certiorari that the present Plan should be confirmed in order to reach an end of interminable litigation no longer has much force. The Plan must be reviewed here or in the District Court. If reviewed

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[1] The new proposal is printed as an appendix to this Petition and is separately presented. A concise summary is found in the introductory paragraphs, pp. 2 to 4 of the Appendix. Counsel for Petitioners did not receive this proposal until May 18, 1959.

[2] Exhibit A to Plan.

here, this Court can and doubtless will consider the whole structure of the Reorganization Plan which has now become thoroughly distorted by fictions and piecemeal extensions of the rule of subordination far beyond the situations to which they were first applied. Firm principles will be established for the guidance of the lower courts which will not be disturbed by successive increases in the value of the debtors' properties, to the end that no further question concerning controlling rules can arise.

On the other hand, if review is denied and the case allowed to go to the District Court to determine whether subordination and the quasi creditor fiction can be stretched further to accommodate the tremendous increase in realizable value of the debtors' assets, another round of hearings, appeals and petitions for certiorari is inevitable.

2. We did not point out in our original Petition what may be the most significant reason for the departure of the Court of Appeals from the accepted and usual course of bankruptcy proceedings. This could be that Columbia's status as a subordinated but not rejected creditor was fixed before minority stockholders were really represented in these proceedings and before the assets of the debtors were sufficient to give minority stockholders any reason to be represented.[3] After the debtors' assets had reached the

[3] Minority stockholders of Inland were not represented in 1945, when the Court of Appeals reversed its 1941 decision disallowing Columbia's claims. Nor were stockholders represented in 1951 when the quasi creditor concept placed their claims behind those of the public creditors of American and Kentucky. In 1954, when Kentucky creditors were awarded an "overage" in American assets after payment of American debts, these stockholders were not formally before the Court. They were allowed a part of the argument time of the American Trustee in the Court of Appeals. Since 1954, the Court of Appeals has consistently refused to measure stockholders' equities against Columbia's equities.

point that stockholders could reasonably expect to realize on their stock interests, the Court of Appeals resolutely refused to consider their equities with respect to Columbia's claims. S.E.C. has in the past and on petition here recognized this fact and urged consideration of stockholders' equities.[4]

3. Review here of the existing Plan is important in the administration of bankruptcy. Clearly settled principles established by this Court have been ignored below. *Pepper* v. *Litton*, 308 U.S. 295, held that creditor claims of a majority stockholder acquired by fraud will be rejected in bankruptcy. *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307, and other bankruptcy cases hold that corporate identity as between a parent and subsidiary will not be ignored in the absence of fraud or wrongdoing. The courts below have completely disregarded these fixed principles. Instead, the Court of Appeals has created the fiction that American and Kentucky public creditors are creditors of Inland—which of course they are not—and have held Columbia's equities superior to those of innocent minority stockholders. Exercise of the supervisory power of this Court is necessary to prevent departure from the accepted principles of these and other cases. This power has frequently been exercised and should be here. Perhaps the clearest example of this Court's supervision to fix the bankruptcy rule is found in the numerous decisions of this Court which were required to convince lower bankruptcy courts that the absolute priority rule rather than the relative priority rule should be followed. Cf. *Chicago, Rock Island & Pacific R. Co.* v. *Howard*, 7 Wall. 392;

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[4] Memorandum for Securities and Exchange Commission filed here, dated April, 1959.

Northern Pacific Railway Co. v. *Boyd*, 228 U.S. 482; *Case* v. *Los Angeles Lumber Products Co., Ltd.*, 308 U.S. 106; *Consolidated Rock Products Co.* v. *DuBois*, 312 U.S. 510; *Marine Harbor Properties, Inc.* v. *Manufacturer's Trust Co.*, 317 U.S. 78.

4. Two questions clearly raised here are of great practical importance in the administartion of bankruptcy law. The first is whether a bankruptcy court should be permitted to disregard settled principles established by this Court relating to subordination and priority by creation of unprecedented fictions; here the fiction that American and Kentucky public creditors are creditors of Inland. The second is whether, in the teeth of square findings by both courts below that American, the parent, has been guilty of no overreaching of its subsidiaries, Inland and Kentucky, and in the absence of any equitable ground, a bankruptcy court can properly ignore the corporate entities of parent and subsidiary corporations. These questions will of necessity frequently arise in reorganization proceedings. If the principles which are established here are permitted to stand as law, the rule of the chancellor's foot can supersede fixed principles of bankruptcy administration established by this Court.

5. Further, this Court has never directly passed on one question of bankruptcy law which is critical here. This is whether minority common stockholders' interests may be preferred in bankruptcy to creditor claims held by majority stockholders whose claims have been acquired and used to destroy the company in flagrant disregard of equitable rules. In *Taylor* v. *Standard Gas & Electric Co.*, supra, this Court held that preferred stockholders' interests are superior to such creditor claims of a majority stockholder. This

Court has never squarely held that the rule in *Taylor* extends to common stockholders although, as noted in our Reply Brief on the original petition, the opinion in *Pepper* v. *Litton*, supra, contains the clearest indication that the rule should be extended to common stockholders. This question should be settled. It will be in issue in all reorganization cases in which common stockholders claim inequitable conduct by creditors. There have been many in the past, and more are almost certain to follow.

Conclusion

For the reasons set forth above and in the Petition for Writ of Certiorari, it is respectfully urged that rehearing be granted, and that upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

ROBERT S. SPILMAN, JR.
111 Capitol Street
Charleston, West Virginia
Counsel for Petitioners.

May 22, 1959

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 38 of the rules of this Court.

ROBERT S. SPILMAN, JR.
111 Capitol Street
Charleston, West Virginia
Counsel for Petitioners.

MAY 22 1959
JAMES R. BROWNING, Clerk

No. 774

IN THE

Supreme Court of The United States

OCTOBER TERM, 1958

ELMO E. ALLEN, ET AL.,
Petitioners,

v.

THE COLUMBIA GAS SYSTEM, INC., ET AL.,
Respondents.

APPENDIX PRESENTED SEPARATELY TO PETITION FOR REHEARING OF ORDER DENYING PETITION WRIT OF CERTIORARI

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Counsel for Petitioners
The Allen Committee and
Edward D. Spilman

May 22, 1959

United States District Court

Eastern District of Kentucky
At Lexington

In Bankruptcy No. 989-B
In the Matter of
INLAND GAS CORPORATION,
Debtor.

In Bankruptcy No. 991-B
In the Matter of
KENTUCKY FUEL GAS CORPORATION,
Debtor.

In Bankruptcy No. 115
In the Matter of
AMERICA FUEL & POWER COMPANY, et al.,
Debtor.

Alterations and Modifications of Plan of Reorganization Dated February 25, 1958 as Amended

The following alterations and modifications are proposed on behalf of public holders of First Mortgage 6½% Sinking Fund Gold Bonds, Series A, and of Ten-Year Convertible 6½% Sinking Fund Gold Debentures of Kentucky Fuel Gas Corporation to the Plan of Reorganization dated February 25, 1958, as amended.

A.

In substitution for Article I of the Plan:

"ARTICLE I

"INTRODUCTORY

"*Section 1. The Plan in General*

"The Plan provides for the internal reorganization of Inland. The capital structure of the Reorganized Company will consist of $4,250,000 First Mortgage Serial Sinking Fund Bonds and $7,500,000 par value common stock (of which $4,765,160 par value will be issued upon consummation of the Plan, $470,000 par value will be reserved for conversion of an equal principal amount of First Mortgage Bonds, and the balance will be authorized but unissued).

"The treatment of the classes of creditors affected by the Plan will be as follows:

"A. Public holders of the American Notes will receive in cash the principal amount of their claims together with all Postbankruptcy interest. As of August 31, 1959, it is estimated that the aggregate payment will be $4,927,860, consisting of principal of $1,905,100 and interest of $3,022,760. At that date, therefore, each public holder of a $1,000 American Note will receive in cash about $2,586.

"B. Columbia will receive in cash the principal amount of its Inland Bonds and Debentures together with Defaulted Interest and all Postbankruptcy interest and the principal amount of its unsecured claims

against Inland. As of August 31, 1959, it is estimated that the aggregate payment will be $5,550,519, consisting of: (1) $1,571,054 principal amount of Inland Bonds together with interest of $2,755,381; (2) $320,100 principal amount of Inland Debentures together with interest of $651,671; and (3) $252,313 principal amount of unsecured claims.

"C. Public holders of Kentucky Bonds and Debentures will receive (1) shares of common stock in the Reorganized Company, and (2) the right to subscribe to additional shares of common stock.

"(1) As a class, the public holders of Kentucky Bonds will receive $2,549,720 par value of New Common Stock at the rate of 114 shares of $10 par value stock for each $1,000 Kentucky Bond; the public holders of Kentucky Debentures will receive $715,440 par value of New Common Stock at the rate of 132 shares of $10 par value stock for each $1,000 Kentucky Debenture.

"An underwriting commitment will make it possible for any public holder of Kentucky Bonds or Debentures who desires to sell the New Common Stock to receive in cash the par value of the shares issued to him.

"(2) In addition, the Kentucky public creditors will have the privilege, if they desire, to subscribe at par for an aggregate of $694,650 par value of New Common Stock at the rate of 25 shares of $10 par value stock for each $1,000 Kentucky Bond or Debenture held by them.

"The underwriters will purchase at par all shares of New Common Stock for which Kentucky public creditors do not subscribe. They will also purchase at par

the remaining $805,350 par value of New Common Stock to be issued upon consummation of the Plan. The subscriptions by Kentucky public creditors and purchases by the underwriters will supply the additional funds necessary to finance the reorganization.

"The effect of the alterations and modifications upon the treatment accorded to each affected class of creditors may be summarized as follows:

"*American Public Noteholders*—No change is made in the treatment of this class.

"*Columbia*—In lieu of $3,021,576.29 of common stock as of December 31, 1957, will receive cash of $5,550,519 as of August 31, 1959.

"*Kentucky Public Bondholders and Debentureholders*—In lieu of cash of $2,466,316.50, will receive (1) cash or New Common Stock of $3,265,160, and (2) the right to subscribe to $694,650 par value of New Common Stock.

"*Section 2. Recent Litigation*

"On February 14, 1957 the Court of Appeals, affirming the Order of the District Court entered March 14, 1956, ruled that the public creditors of Kentucky were not entitled to Postbankruptcy interest against the assets of Inland in priority to the subordinated claims of Columbia against Inland. 241 F.2d 374. Petitions for certiorari were denied by the United States Supreme Court on October 14, 1957, and a petition for rehearing was denied on November 18, 1957. 355 U.S. 838, 879.

"The order of March 14, 1956 had directed the Trustees to prepare and file a new plan of reorganization. The Plan dated February 25, 1958, as amended by orders entered April 7, 1958 and June 2, 1958, was proposed by the Trustees pursuant to that direction. Representatives of Kentucky public creditors and of American public stockholders objected to the Plan, but these were overruled by the District Court and the Plan was approved and confirmed. On January 15, 1959, the Court of Appeals dismissed appeals taken by the objectors and affirmed the order of the District Court confirming the Plan, ruling that the District Court had appropriately applied the adjudication as to Post-bankruptcy interest. 262 F.2d 510. Petitions for certiorari were denied by the United States Supreme Court on April 27, 1959.

"The financial condition of the Debtors has now been improved to the extent that with institutional financing and the underwriting of new common stock it has become possible to provide sufficient cash, in addition to that available in the Debtors' estates, (1) to pay all administrative and priority claims, (2) the claims of the public holders of the American Notes, and (3) the claims of Columbia against Inland; and also to preserve the residual values in the Debtors' estates for the benefit of the Kentucky public creditors in partial satisfaction of their unpaid claims or Kentucky Bonds and Debentures by offering them New Common Stock which they may retain or sell for cash as they individually deem desirable."

B.

In substitution for the last paragraph of Section 2, Article II of the Plan:

"The remaining assets of Inland consists of cash on hand and in banks, receivables, inventories of materials and supplies, and prepaid expenses and deferred charges, all of which are reflected in the balance sheet of Inland as of December 31, 1958, which is part of 'Exhibit A' attached hereto and made a part hereof."

C.

In substitution for the last sentence of Section 2, Article III of the Plan:

"* * * The assets of Kentucky as of December 31, 1958, consists of $8,855.60 in cash and approximately 26% of the capital stock of Inland as shown by 'Exhibit B'."

D.

In substitution for Section 3, subdivisions (a) and (b) of Article III of the Plan:

"(a) During the course of the Proceedings, pursuant to order of the Court, a payment equal to 18% of the principal amount was made on the Kentucky Bonds, which for purposes of the Plan is regarded as having been applied upon accrued and unpaid interest. For Plan purposes, therefore, the principal amount of the Bonds held by creditors other than Columbia is $2,236,600. As of December 31, 1958, the accrued and unpaid interest exceeded $3,700,000.

"(b) The Kentucky Debentures which are outstanding and in the hands of creditors other than Columbia aggregate $542,000 principal amount. As of Decem-

ber 31, 1958, the accrued and unpaid interest was $1,006,990.35."

E.

"ARTICLE V

"VALUATION".

F.

In substitution for Section 3, Article V of the Plan:

"*Section 3. The Reorganization Value as of December 31, 1957.*

"At the direction of the Inland Trustee, L. E. Kihlken, in a report filed in February 1958, arrived at a valuation of $10,538,800 as of December 31, 1957 for Inland and the American subsidiaries. This value was adopted by the District Court and affirmed by the Court of Appeals.

"In its Third Advisory Report on the Plan, dated May 1, 1958, the Securities and Exchange Commission found a value for the same assets of $12,020,100. Witnesses at the hearings on the Plan testified to higher values; these values were not adopted by the District Court."

G.

In substitution for Section 2, Article VI of the Plan:

"*Section 2. Classification*

"For purposes of the Plan and its acceptance, such claims and interests are classified as follows:

"Class 1—Claims to be paid in cash in full.

"(a) Claims of creditors of, and holders of liabilities against, the Trustees, including reorganization expenses, allowances, and fees.

"(b) Claims of the United States of America by reason of any and all federal taxes or customs duties.

"(c) Claims of state and local taxing authorities with respect to taxes.

"(d) Claims with respect to Workmen's Compensation.

"(e) Sundry unsecured general claims against Inland, other than those held by Columbia.

"(f) Claims of holders, other than Columbia, of American Notes (including Postbankruptcy interest).

"(g) Claims of Columbia as holder of Inland Bonds and Debentures (together with Defaulted Interest and Postbankruptcy Interest thereon) and of general claims against Inland (excluding Postbankruptcy Interest).

"Class 2—Claims entitled to participate under the Plan.

"(a)(i) Claims of holders, other than Columbia, of Kentucky Bonds; and

"(a)(ii) Claims of holders, other than Columbia, of Kentucky Debentures.

"Class 3—Claims and interests not entitled to participate under the Plan.

"(a) All claims for which payment is not hereinabove provided, including inter-company claims, and all interests of the stockholders of American and Kentucky, and the interests of the public stockholders of Inland."

H.

In substitution for Sections 1 and 2 of Article VII of the Plan:

"ARTICLE VII

"THE REORGANIZED COMPANY

"*Section 1. Assets of the Reorganized Company*

"The Reorganized Company will be Inland or a new corporation and will acquire all the assets of the Debtors by reversion, transfer, merger or consolidation. The assets of the Reorganized Company shall be free and clear of all mortgages, liens and claims except as provided for in the Plan or in the order confirming the Plan.

"*Section 2. Capitalization of the Reorganized Company*

"The capitalization of the Reorganized Company will be as follows:

"A. *The New Institutional First Mortgage Bonds.* The Reorganized Company will issue $4,250,000 Serial

First Mortgage Sinking Fund Bonds due October 1, 1971, consisting of $2,530,000 Series A Bonds, $470,000 of Series B Bonds and a $1,250,000 Series C Note (referred to collectively as the New Bonds).

The terms and conditions of the New Bonds are outlined in a letter from Kidder, Peabody & Co., Inc., investment bankers, transmitting commitments to purchase the New Bonds from Massachusetts Mutual Life Insurance Company of Springfield, Massachusetts, Home Life Insurance Company of New York and Empire Trust Company of New York ('Exhibit E'). The Series A New Bonds will bear interest at the rate of 5½% per annum and will be retired by cash sinking fund payments of $315,000 each on October 1, 1963 and each October 1st thereafter through 1969, and, the balance of $325,000 on October 1, 1970. The Series B New Bonds will bear interest at the rate of 5½% per annum, will have no sinking fund and will be due on October 1, 1971; they will be convertible (beginning one year from issuance and continuing until maturity) into shares of new common stock at the rate of 100 shares of new common stock $10 par value) for each $1,000 Series B Bond. The Series C Note will bear interest at the rate of 5% per annum and will require sinking fund retirements of $400,000 per annum during 1960 and 1961 and $450,000 during 1962; it will be issued in exchange and to secure the $1,250,000 5% loan to be made by Empire Trust Company, as outlined in 'Exhibit E', repayable in quarter-annual installments of $100,000 each.

All of the New Bonds are to be equally secured by a first mortgage lien on substantially all of the fixed assets of the Reorganized Company and a pledge of

its gas leases and gas purchase and gas sales contracts. All terms and provisions of the New Bonds and their mortgage indenture not specified in 'Exhibit E' shall be subject to the approval of the Court.

"B. *New Common Stock.* The Reorganized Company will be authorized to issue 750,000 shares of New Common Stock having a par value of $10 per share, which shall be fully paid and non-assessable; 476,516 shares will be issued upon consummation of the Plan, 47,000 shares will be reserved for conversion of the Series B New Bonds, and the remaining shares will be authorized but unissued. At all meetings of stockholders of the Reorganized Company, each share of stock shall be entitled to one vote."

and by adding to Article VII:

"*Section 4. Initial Board of Directors*

"The initial Board of Directors shall consist of not more than seven directors. For the first year, three of the directors shall be nominated by the underwriters and the remaining directors shall be nominated by Kentucky public creditors; the membership of the first Board of Directors shall be subject to the approval of the Court and acceptable to the underwriters.

"The underwriters and the proponents of the Plan have agreed upon the following nominations:

"BEN WILLIAMSON, JR.—Trustee of Inland and Kentucky and in charge of operations since 1937.

"O. H. HORNE—General Manager for the Inland Trustee and associated with the Inland operations since 1928.

"AL. A. LIPPE—Executive Vice President, Treasurer and Director of Standard Gas & Electric Corporation; Director and Member of Executive Committee of South Jersey Gas Co.; Executive Vice President and Director of Ohio Gas Company; and director in other companies.

"JOSEPH F. DEMPSEY—President of Dempsey & Company, one of the underwriters.

"ARTHUR S. BOWES—Vice Chairman of the Board of H. M. Byllesby & Company, Inc., one of the underwriters.

"The proponents will make additional nominations if the Board is increased to seven directors."

I.

In substitution for Article VIII of the Plan:

"ARTICLE VIII

"TREATMENT OF CLAIMS OF CREDITORS AND STOCKHOLDERS

"1. COSTS AND EXPENSES OF ADMINISTRATION. The expenses of the Proceedings and of the Plan and its consummation (including the fees of the investment bankers who obtained commitments to purchase the First Mortgage Bonds, the Institutional commitment

fees and the standby fees of the underwriters of the New Common Stock) and all administration expenses, compensation, fees, disbursements, expenses and other allowances made or to be made by the Court, shall be assumed by the Reorganized Company and paid by it in cash in full.

"2. OBLIGATIONS INCURRED BY TRUSTEES IN OPERATION OF BUSINESS. All debts and obligations incurred by the Trustees in connection with the operation of the business of the Debtors shall be assumed by the Reorganized Company and paid in cash in full in the ordinary course of business.

"3. CLAIMS OF TAXING AUTHORITIES. The claims of the United States for taxes and customs duties and the claims of state and local taxing authorities for taxes shall be paid in cash in full.

"4. WORKMEN'S COMPENSATION CLAIMS. Workmen's Compensation claims shall be paid in cash in full.

"5. SUNDRY UNSECURED CLAIMS AGAINST INLAND. All unsecured claims against Inland, other than those held by Columbia, shall be paid in cash in full.

"6. AMERICAN PUBLIC CREDITORS. The holders of American Notes, other than Columbia, shall be paid in cash in full the principal amount of their Notes together with unpaid interest thereon.

"7. COLUMBIA'S CLAIMS AGAINST INLAND. Columbia shall be paid in cash in full the principal amount and unpaid interest of its Inland Bonds and Debentures and the principal amount of its unsecured claims against Inland.

"8. KENTUCKY PUBLIC CREDITORS.

"(a) KENTUCKY BONDHOLDERS. The holders of Kentucky Bonds, other than Columbia, shall receive as a class:

(i) $2,549,720 par value of New Common Stock; and

(ii) the right to subscribe at par to $559,150 par value of New Common Stock.

"Each public holder of a $1,000 principal amount Kentucky Bond shall receive:

(iii) 114 shares of New Common Stock; and

(iv) the right to subscribe at par to 25 shares of New Common Stock.

"(b) KENTUCKY DEBENTUREHOLDERS. The holders of Kentucky Debentures, other than Columbia, shall receive as a class:

(v) $715,440 par value of New Common Stock; and

(vi) the right to subscribe at par to $135,500 par value of New Common Stock.

"Each public holder of a $1,000 principal amount Kentucky Debenture shall receive:

(vii) 132 shares of New Common Stock; and

(viii). the right to subscribe at par to 25 shares of New Common Stock.

"No fractional shares or scrip will be issued, but cash will be provided in lieu thereof on the basis of $10 per share.

"9. OTHER CLAIMS AND STOCK INTERESTS. No provision is made for other claims or for the interests of

the public stockholders of Inland and the stockholders of American since the assets of the Debtors are insufficient."

J.

In substitution for Sections 1, 2 and 4 of Article IX of the Plan:

"*Section 1. Compliance with Statutory Provisions*

"The Plan, as altered and modified, shall be approved, accepted, confirmed and consummated in accordance with the provisions of Chapter X of the Bankruptcy Act.

"*Section 2. Effective Date of Plan*

"The Effective Date of the Plan is August 31, 1959 and the Plan shall be consummated as of that date or such other practicable date as the Court shall fix.

"Until consummation of the Plan, the Inland Trustee shall continue to operate the properties and estate of Inland."

* * *

"*Section 4. Obligations Assumed by Reorganized Company*

"The Reorganized Company shall assume:

"A. All current liabilities of Inland and the Inland Trustee as of the close of business on the date determined by the Court for consummation of the Plan, as certified by the auditor of the Inland Trustee;

"B. All gas purchase and gas sales contracts;

"C. All executory contracts of Inland and the Inland Trustee, including unexpired leases, easements, and new agreements, which have not been rejected or disaffirmed in the Proceedings, unless the Reorganized Company, with leave of the Court, shall disaffirm the same prior to the date of consummation of the Plan;

"D. All obligations of the employer under contracts entered into by the Inland Trustee with the approval of the Court providing for pension or retirement benefits for Inland employees;

"E. All non-monetary obligations of the Trustees, if any, under Section 278.485 of the Kentucky Revised Statutes;

"F. All franchise taxes which may be due and payable by Inland to the State of Delaware in the event, but only in the event, the Reorganized Company is Inland; and

"G. Monies heretofore ordered distributed by the Court to public holders of American Notes and Kentucky Debentures and remaining unclaimed.

"*Section 5. Underwriting of New Common Stock*

"Pursuant to a commitment received from Dempsey & Company and H. M. Byllesby & Company, Inc. ('the underwriters'), a copy of which is annexed hereto ('Exhibit F'), the public holders of Kentucky Bonds and Debentures who wish to do so may sell to the underwriters at par all or part of the shares issued to them under the Plan within ten days prior to the expiration of the underwriters' commitment or within such

extended time as the underwriters in their sole discretion may fix.

"All shares of New Common Stock for which public holders of Kentucky Bonds or Debentures do not subscribe will be purchased at par by the underwriters. The right of Kentucky public holders to subscribe for New Common Stock shall expire ten days prior to the expiration of the underwriters' commitment or on such later date as the underwriters in their sole discretion may fix.

"Certain public holders of Kentucky Bonds and Debentures have advised the underwriters that they will not sell their shares of New Common Stock but will retain the shares and will also exercise their rights to subscribe. It is estimated that these holders will be entitled under the Plan to receive and subscribe for an aggregate of approximately 145,000 shares. With respect to the remaining shares of New Common Stock which the underwriters may be required to purchase, the underwriters will receive on account of their underwriting expenses 10 cents per share payable by the Reorganized Company as an expense of consummating the Plan.

"The underwriters have also agreed to purchase an addiitonal 80,535 shares of New Common Stock at $10 per share to furnish additional funds necessary to consummate the Plan and the Reorganized Company shall sell such shares to the underwriters."

K.

In substitution for Article X of the Plan:

"ARTICLE X

"ACCEPTANCE OF THE PLAN

"The Plan shall be submitted for acceptance to the holders of claims in Class 2: the public holders of Kentucky Bonds and Debentures. The forms for proving their claims and indicating their acceptance or rejection of the Plan shall be prescribed by the Court."

L.

In substitution for Sections 1 and 2 of Article XI of the Plan:

"*Section 1. Payment of American Notes and Columbia*

"As soon as practicable after the Confirmation Date, and thereafter from time to time as funds become available, cash distributions shall be made, with the approval of the Court, to the public holders of the American Notes. With respect to the distribution to be made on the American Notes, the Court shall fix a Date of Payment on which final payment on the securities shall commence and after such date no interest shall accrue on the securities.

"As soon as practicable after the Confirmation Date, and either simultaneously with the final payment of the American Notes or thereafter as funds become

available, cash distribution shall be made, with the approval of the Court, to Columbia.

"*Section 2. Kentucky Public Creditors*

"As soon as practicable after the Confirmation Date, the Court shall prescribe the mechanics for exchanging Kentucky Bonds and Debentures for voting trust certificates and new debentures, if any, and may appoint an Exchange Agent for this purpose. Either before or after such date, the Court shall also approve the mechanics for exercising subscriptions to New Common Stock and selling New Common Stock to the underwriters."

M.

In substitution for Sections 1 and 8 of Article XII of the Plan:

"*Section 1. Tax Ruling and Closing Agreement*

"The Plan shall not be consummated until the following is obtained from the Treasury Department of the United States:

"(a) An official ruling to the effect that consummation of the Plan will not result in any Federal income tax liability to the estates of the Debtors;

"(b) An official ruling that either (i) a tax-free organization will be effected under the Plan with respect to the transfer of the properties of the Debtors in the Reorganized Company and the exchange by the Kentucky public creditors of their claims for New Common Stock of the Reorganized Company, or (ii) a

taxable reorganization will be effected with respect to such exchange and the Reorganized Company will acquire a new tax basis, and not the predecessors' tax basis, with respect to the properties of the Debtors transferred to the Reorganized Company; and

"(c) A final closing agreement, in such form and under such conditions as the Treasury Department may impose, under and by the terms of which all federal income tax obligations of the Debtors and the Trustees are finally determined."

N.

By adding the following definitions to those on page 1 and 2 of the Plan:

"American public creditors—The public holders of $1,905,100 principal amount of American Notes.

"Inland Bonds—First Mortgage 6½% Sinking Fund Gold Bonds of Inland.

"Inland Debentures—Ten-Year 7% Sinking Fund Debentures of Inland.

"Kentucky public creditors—The public holders of $2,778,600 principal amount of Kentucky Bonds and Debentures.

"New Bonds—The First Mortgage Sinking Fund Serial Bonds of the Reorganized Company to be issued in accordance with the provisions of the Plan.

"Public holders—Holders, other than Columbia, of American Notes, Kentucky Bonds or Kentucky Debentures.

"Underwriters—Dempsey & Company and H. M. Byllesby and Company, Inc., underwriters of the New Common Stock."

O.

In substitution for Exhibits A through H, the following exhibits shall be attached to the Plan:

EXHIBIT A—Comparative Balance Sheet as of December 31, 1958 of Ben Williamson, Jr., Trustee, Inland Gas Corporation (Combining Accounts of Corporation and Trustee) in the form transmitted to creditors of the Debtors.

EXHIBIT B—Balance Sheet as of December 31, 1958 of Kentucky Fuel Gas Corporation prepared by Eskew, Gresham & Diersen, Certified Public Accountants.

EXHIBIT C—Consolidated Balance Sheet as of December 31, 1958 of American Fuel and Power Company and Wholly-Owned Subsidiaries prepared by Eskew, Gresham & Diersen, Certified Public Accountants.

EXHIBIT D—Comparative Statement of Earnings for Twelve Months Ended December 31, 1957 and December 31, 1958 of Ben Williamson, Jr., Trustee, Inland Gas Corporation (Combining Accounts of Corporation and Trustee) in the form transmitted to creditors of the Debtors.

EXHIBIT E—Letter of Kidder, Peabody & Co., Inc., and annexed letters of Massachusetts Mutual Life Insurance Company, Home Life Insurance Company and

Empire Trust Company, relative to purchase of New Bonds.

EXHIBIT F—Underwriting of New Common Stock.

Whenever the Plan refers to December 31, 1957 figures, substitute, if feasible, December 31, 1958 figures as contained in the foregoing exhibits.

Exhibit E

KIDDER, PEABODY & CO.
Incorporated

WHOLLY OWNED AFFILIATE OF KIDDER, PEABODY & CO.

17 Wall Street
New York
123 South Broad Street
Philadelphia

75 Federal Street
Boston
33 South Clark Street
Chicago

New York 5, N. Y.
April 30, 1959

Honorable H. Church Ford
United States District Judge
United States District Court
Lexington, Kentucky

Mr. Ben Williamson, Jr.
Trustee, Inland Gas Corporation
and Kentucky Fuel Gas Corporation
Ashland, Kentucky

Mr. Clinton M. Harbison
Trustee, American Fuel & Power Company
and Subsidiaries
Lexington, Kentucky

Re: Inland Gas Corporation
Kentucky Fuel Gas Corporation,
American Fuel & Power Company,
et al., Debtors in Bankruptcy
Nos. 989-B, 991-B, 115

Dear Sirs:

At the request of Kentucky public creditors, we have succeeded in placing privately $4,250,000 of First Mortgage Serial Sinking Fund Bonds, due October 1, 1971, to be issued by the Reorganized Company. The proceeds of the New Bonds are to be used to finance Alterations and Modifications which we understand Kentucky public creditors intend to propose to the Plan of Reorganization dated February 25, 1958, as amended by orders entered April 7 and June 2, 1958. The commitment letters of the prospective purchasers and the terms and conditions of the three series of New Bonds are annexed hereto.

Subject to the matters referred to in the annexed commitment letters, Empire Trust Company of New York, New York has agreed to purchase $1,250,000 principal amount of Series C 5% New Bonds; Massachusetts Mutual Life Insurance Company of Springfield, Massachusetts has agreed to purchase $1,900,000 principal amount of the Series a 5½% New Bonds and $350,000 principal amount of the Series B 5½% Convertible New Bonds; and Home Life Insurance Company of New York, New York has agreed to purchase $630,000 principal amount of the Series A 5½% New Bonds and $120,000 principal amount of the Series B 5½% Convertible New Bonds.

As a condition of making these commitments available for use in effectuating the Alterations and Modifications to be proposed by Kentucky public creditors, we are to receive the customary agent's fee of $45,000 in compensation for our services.

If the financing commitments are approved by the court, and accepted by security holders, we shall be pleased to assist in the consummation of the financing.

Very truly yours,

KIDDER, PEABODY & CO., INCORPORATED
By DUDLEY F. CATES
Vice-President

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY
Springfield Massachusetts
Organized 1881

HOMER N. CHAPIN
Executive Vice President
Investments

April 9, 1959

Kidder, Peabody & Co., Inc.
17 Wall Street
New York 5, New York

Gentlemen:

You have recently presented to us financing proposed by certain creditors of Inland Gas Corporation in connection with their proposed plan of reorganization for Inland. We understand that this plan, which is briefly outlined as to its general terms in the accompanying memorandum, involves the issuance by the reorganized Inland Gas Corporation of up to $4,250,000 first mortgage obligations, consisting of the following: $2,530,000 Series "A" 5½% Bonds due October 1, 1971; $470,000 5½% Series "B" Convertible Bonds due October

1, 1971; and $1,250,000 5% Series "C" First Mortgage Note due October 1, 1962.

Our Executive Committee has approved the purchase of $1,900,000 of such Series "A" and of $350,000 of such Series "B" Bonds of Inland Gas Corporation. We are enclosing a memorandum setting forth a brief description of some of the principal terms applicable to these issues. Our purchase of these Bonds is contingent upon Court approval of the reorganization plan and the other requirements mentioned in the memorandum, and is subject to the execution nad delivery of a purchase agreement and other necessary documents, acceptable to Inland and to us and our counsel, setting forth these terms and others customary and appropriate in transactions of this kind.

If the proposed reorganization plan is approved by the District Court, counsel mutually agreeable will represent us and, as is customary, their fees and all expenses in connection with this transaction will be paid by Inland Gas Corporation.

Very truly yours,

HOMER N. CHAPIN

Executive Vice President—Investments

HNC:JKB:jp
Enclosure

[ACCOMPANYING MEMORANDUM]

PROPOSED TERMS

INLAND GAS CORPORATION

First Mortgage Bonds

Issues:

(1) $2,530,000 5½% Series "A" First Mortgage Sinking Fund Bonds due October 1, 1971

(2) $470,000 5½% Series "B" First Mortgage Convertible Bonds due October 1, 1971

(3) $1,250,000 5% Series "C" First Mortgage Note due October 1, 1962.

All three issues are to be closed at the amounts originally issued.

Purchase Price:

Par plus accrued interest (if any).

Massachusetts Mutual Commitment:

$1,900,000 Series "A" Bonds, and $350,000 Series "B" Bonds. This commitment is contingent upon, among other things, (1) commitments from responsible parties for the balance of all issues of mortgage debt and (2) commitments from others to purchase newly issued common stock of the reorganized company for cash of not less than $1,500,000.

Term of Commitment:

The Massachusetts Mutual commitment will expire on September 1, 1960.

Commitment Fee:

On the closing date, Inland is to pay the Massachusetts Mutual a commitment fee calculated at the rate of ½ of 1% per annum on the amount of mortgage bonds purchased. This commitment fee is to be calculated from April 9, 1959.

Certain General Conditions to Loan:

(1) Approval by the District Court of a reorganization plan following the general lines outlined below under "Use of Proceeds", and issuance by the Court of an order confirming this plan, such order to be beyond appeal and binding upon all parties.

(2) A final settlement with the Treasury Department for all prior years' Federal Income Taxes in a manner not inconsistent with the proposed reorganization plan.

(3) An opinion of counsel for the bond purchasers that the Mortgage Bonds will have a lien upon substantially all the fixed assets, gas leases, and gas purchase and sales contracts of Inland, ranking prior to all other liens and claims against Inland, except unpaid reorganization expenses.

Closing:

The closing date is to be as soon after the issuance of the order of confirmation referred to above as can conveniently be arranged.

Security:

Both series of Mortgage Bonds are to be equally secured and are to be issued under a trust indenture having general provisions similar to other mortgage bond issues of this type. The Series "C" First Mortgage Note is to be equally secured with the Mortgage Bonds. The Bond and Note proceeds are to be used for the purposes outlined under "Use of Proceeds". It is contemplated that issuance of the mortgage obligations and discharge of the various claims upon Inland would occur virtually simultaneously, so that Inland could then be declared a newly reorganized company. The Bonds are to be secured by a first lien upon substantially all of the fixed assets of Inland and a pledge of the company's gas leases and gas purchase and sales contracts. Such contracts are to include all of the presently effective contracts between the Inland trustee and Inland's industrial customers.

Redemption:

Both series of Mortgage Bonds may be redeemed at par at any time for sinking fund purposes or from eminent domain, insurance or similar proceeds; the bonds are to be otherwise redeemable at a price of 105½ during the first 12 months after issuance, with the call price reducing ½ of 1% in each 12-month period thereafter; provided, however, that the bonds shall not be callable during the first six years after issuance as the result of transactions involving the borrowing of funds at an effective interest cost of less than 5½% per annum.

Use of Proceeds:

Together with available cash of Inland and the $1,500,000 proceeds from the sale of additional common stock, the proceeds from the sale of the Mortgage Bonds and Note are to be advanced to the Inland trustee in order to pay the following claims under the proposed plan of reorganization: (1) tax claims and various expenses of the trustee and other reorganization expenses, to the extent that they are not assumed by the reorganized company; (2) payment of full principal and accrued interest on the American Fuel Notes (amounting to about $4,838,000 as of December 31, 1958); (3) payment of principal and accrued interest to Columbia Gas in satisfaction of its bond and debenture claims against Inland and the principal of its unsecured claims against Inland, (amounting in total to about $5,417,500 as of December 31, 1958); and (4) to provide the reorganized company with cash working funds of about $300,000. Common stock of the reorganized company is to be issued to the holders of the Kentucky Fuel Bonds and Debentures in satisfaction of their claims. It is expected that the bulk of the reorganization expenses, which were estimated at $796,000 as of December 31, 1957, will be assumed by the reorganized company and discharged from time to time as they are approved for payment by the District Court.

To the extent that the Court determines that proceeds of the mortgage obligations are not needed for the above purposes, the amounts of the obligations (and the commitment of each purchaser) are to be reduced proportionately for each series to the extent of cash not needed. After completion of the reorganization, it

is expected that the only debt of Inland in addition to the mortgage debt will consist of any unpaid reorganization expenses and current liabilities incurred in the ordinary course of business.

Sinking Fund:

(1) The Series "C" Note is to have a cash sinking fund that will retire $400,000 on October 1, 1960, $400,000 on October 1, 1961, and $450,000 at maturity on October 1, 1962.

(2) The Series "A" Bonds are to have a cash sinking fund that will retire $315,000 bonds on each October 1, 1963 to 1969 inclusive, and the balance of $325,000 on October 1, 1970.

(3) The Series "B" Bonds are to have no sinking fund.

All sinking fund payments are to be proportionately reduced to the extent that less than $4,250,000 mortgage debt is issued.

Conversion:

Each Series "B" Bond of $1000 denomination is to be convertible into 100 shares of common stock (par $10) beginning one year from issuance and continuing until maturity. This conversion ratio assumes that the reorganized company will have outstanding initially 500,000 shares of common stock (par $10). A total of 47,000 shares of additional common stock is to be reserved for the conversion of the Series "B" Bonds, and conversion rights are to be protected against dilu-

tion. If, in the opinion of bondholder's counsel, registration with the Securities & Exchange Commission of the Series "B" Bonds or the additional stock issuable upon conversion is required for the purposes of conversion, or if the Inland common stock to be outstanding is registered, the reorganized company will undertake the registration of the Series "B" Bonds or such additional stock and pay all attendant expenses.

Debt Permitted:

The reorganized company is to have no debt except the following:

(1) The Series "A" and Series "B" Mortgage Bonds and the Series "C" Mortgage Note.

(2) No additional mortgage bonds, except with the consent of the holders of 75% of the outstanding Mortgage Bonds.

(3) Unsecured current or term borrowings not to exceed $500,000 at any one time outstanding, except with the consent of the holders of 75% of the outstanding Mortgage Bonds.

(4) Estimated liability for reorganization expenses, which as of the consummation date is not to exceed $1,000,000.

Mergers, etc.

Inland may not merge or consolidate with another company except with consent of the holders of 75% of the outstanding Mortgage Bonds.

Working Capital Requirement:

None as such. (See "Dividend Restrictions" below).

Dividend Restrictions:

Dividends upon the capital stock of the reorganized companay, or repurchases of such stock except from stock sales proceeds, are to be limited to 75% of the net income of the company after income taxes accumulated subsequent to the closing date. Such net income is to be calculated after the deduction of the greater of (a) depreciation accrued by the company subsequent to the closing date, or (b) the aggregate sinking fund payments on the Mortgage Bonds and Note. Furthermore, no dividend or other disbursement upon the capital stock is to be made after the closing date unless after giving effect thereto the net working capital (current assets minus current liabilities) of Inland would be at least $300,000. For the purposes of this computation, (1) inventories of materials and supplies are to be excluded from current assets; (2) the estimated liability for all reorganization expenses is to be included in current liabilities; and (3) sinking fund payments due on the Mortgage Bonds and Note within twelve months are to be excluded from current liabilities.

Other Terms:

Other terms contained in the indenture are to be similar to those customarily found in other indentures securing bonds of this type.

Legal:

All legal matters in connection with this financing are to be approved by independent counsel for the purchasers of the Mortgage Bonds, with all reasonable expenses of such counsel to be paid, subject to the

approval of the Court, by the reorganized company upon consummation of the financing.

Incorporated 1860

HOME LIFE INSURANCE COMPANY
256 Broadway, New York 8, N. Y.
BEekman 3-6400

ROBERT D. GUIBORD
Second Vice President
SECURITIES

April 30, 1959

"Our 99th Year"

Kidder, Peabody & Co.
17 Wall Street
New York 5, New York
Attention: Mr. Joseph B. Wyatt

Gentlemen:

You have recently presented us with a financing proposal made by certain creditors of Inland Gas Corporation in connection with their plan of reorganization for Inland. In accordance with this plan $4,250,000 First Mortgage Bonds will be issued, said bonds to be in three series comprised of $1,250,000 Series C, 5% Bonds to mature within three years after issuance, $2,530,000 Series A, 5½% Sinking Fund Bonds due 1971 and $470,000 Series B, 5½% Convertible Bonds due 1971.

Other proposed terms of the new bond financing we understand are to conform to the four-page memorandum dated April 9th, which accompanied the commitment letter of the Massachusetts Mutual Life Insurance Company of the same date with certain changes which have subsequently been agreed upon, namely, that the sinking fund on the Series A Bonds held by life insurance company investors will not commence for a period of approximately three years from the issuance date of the Bonds in order to permit the repayment in full of $1,250,000 of the Series C Bonds which it is presently contemplated will be taken by a banking institution.

This is to inform you that our Finance Committee has approved the purchase of $750,000 Inland Gas Corporation First Mortgage 5½% Bonds due 1971, it being understood that $630,000 of this amount will be Series A Bonds and $120,000 Series B Bonds. Our purchase of these bonds is contingent upon court approval of the reorganizational plan and is subject to the execution and delivery of a purchase agreement and other necessary documents acceptable to Inland and to us and our counsel, setting forth the terms as specified above together with others customarily and appropriate in transactions of this kind.

The purpose of this letter is to tell you that the terms of the financing as presented in Kidder, Peabody's memorandum and in the four-page memorandum of Massachusetts Mutual dated April 9th are, in principle, satisfactory to us, that we are desirous of entering into a purchase contract covering this financing and that we have authority to do so but that any binding commitment on our part is subject to execution of a pur-

chase agreement and indenture satisfactory to us and our counsel.

Sincerely,

ROBERT GUIBORD.

RDG:HC

EMPIRE TRUST COMPANY
Oil & Natural Gas Department
20 Broad Street . New York 5, N. Y.

WILLIAM B. SNYDER
Vice President

April 28, 1959

Kidder, Peabody & Co., Incorporated
17 Wall Street
New York 5, New York

Dear Sirs:

We have reviewed the March 1959 Memorandum of Private Placement of $4,500,000 of Bonds of Inland Gas Corporation ("Inland") which you submitted and have discussed with you a loan by us to Inland in the amount of $1,250,000.

This will confirm our commitment, subject to the terms and limitations hereinafter set forth, to lend $1,250,000 to Inland, at an interest rate of 5% per annum, repayable $100,000 quarterly commencing three months after making of the loan. Our loan shall

be evidenced by a note or notes secured by a first mortgage on all of the company's fixed assets, gas leases and gas purchase and sales contracts and be issued under a First Mortgage Indenture, securing an issue of notes and bonds limited to $4,500,000.

Our loan will be contingent upon court confirmation of a plan of reorganization of Inland approving an overall financing program of Inland, including the borrowing from us and subject to the execution and delivery of a Loan Agreement, Mortgage, Note and other necessary and appropriate documents, in form and substance satisfactory to Inland and to us and to our counsel and containing terms and provisions customary and appropriate in transactions of the character contemplated, and to approval of all legal matters by our counsel.

The closing of our loan shall be as soon as possible after the entry of a final order of confirmation of a plan of reorganization of Inland. The commitment made by this letter shall expire on September 1, 1960. On the closing date Inland shall pay us a commitment fee calculated at the rate of ½ of 1% per annum from April 28, 1959 on $1,250,000. In addition, Inland shall make payment at the closing of the fees and expenses of our counsel in connection with the making of the loan.

Our loan shall be made concurrently with the issue and sale by Inland of $3,250,000 of First Mortgage Bonds and the sale of common stock to private capital of at least $1,500,000.

It is agreeable to have our note or notes and the aforesaid First Mortgage Bonds issued under the same First Mortgage Indenture, provided that, except in

the event of default, there shall be no required or permitted prepayment of principal of the mortgage bonds until after the final maturity of our note. Interest on the mortgage bonds may be paid concurrently with interest upon our note. In the event of default, the mortgage bonds and our note shall rank equally and participate pari passu.

The First Mortgage Indenture shall contain the usual provisions for a financing of the nature contemplated and the granting of a first mortgage on all assets of Inland as security for our note.

Our Loan Agreement with Inland shall provide for the use of the proceeds from our loan and from the sale of mortgage bonds in a manner satisfactory to Inland, the purchasers of the mortgage bonds and ourselves. In addition, the Loan Agreement shall contain provisions, satisfactory to Inland, the purchasers of the mortgage bonds and ourselves, limiting the incurring of debt by Inland, except with our consent, and limiting the payment of dividends.

The Loan Agreement will also provide that a condition to our making the loan will be the continued existence of the present contracts of Inland for the purchase and sale of gas and no material adverse change in the business and assets of Inland between now and the closing date.

Any conditions precedent established by the purchasers of the mortgage bonds shall also be deemed to be conditions precedent to the making of our loan.

Very truly yours,

EMPIRE TRUST COMPANY

WILLIAM B. SNYDER

Vice-President

Exhibit F

DEMPSEY & COMPANY
Investment Bankers
135 South La Salle Street
Chicago 3, Illinois
Members
Midwest Stock Exchange

April 20, 1959

Honorable H. Church Ford
United States District Judge
United States District Court
Lexington, Kentucky

Mr. Ben Williamson, Jr.
Trustee, Inland Gas Corporation
and Kentucky Fuel Gas Corporation
Ashland, Kentucky

Mr. Clinton M. Harbison
Trustee, American Fuel & Power Company
and Subsidiaries
Lexington, Kentucky

Re: Inland Gas Corporation, Kentucky Fuel Gas Corporation, American Fuel & Power Company, et al., Debtors
In Bankruptcy Nos. 989-B, 991-B, 115

Dear Sirs:

We refer to the Plan of Reorganization dated February 25, 1958, as amended by Orders entered April 7 and June 2, 1958 ("the Plan").

We are also familiar with Alterations and Modifications to the Plan which are proposed to be filed on behalf of Kentucky public creditors. The various terms and abbreviations used herein are those used in the Plan and the Alterations and Modifications.

The principal features of the Alterations and Modifications, copy of which is annexed hereto, are as follows:

1. The capital structure of the Reorganized Company will consist of (a) $4,250,000 New First Mortgage Serial Sinking Fund Bonds due October 1, 1971, of which $1,250,000 will bear interest at the rate of 5% per annum and the balance at the rate of 5½% per annum, and (b) 750,000 shares of $10 par value New Common Stock. Of the 750,000 authorized shares of New Common Stock, 476,516 shares will be issued upon consummation of the Plan and 47,000 shares will be reserved for conversion of $470,000 principal amount of the First Mortgage Bonds.

2. Excess funds in the estates of the Debtors, together with the proceeds of the New First Mortgage Bonds to be purchased by institutions and of subscriptions to New Common Stock, will be used to make the following cash distributions:

a. Payment in full of the principal and unpaid interest on the publicly-held American Notes, estimated to aggregate approximately $4,927,860 at August 31, 1959.

b. Payment in full of the principal and unpaid interest on the Inland Bonds and Inland Debentures held by Columbia and the principal of Columbia's general

claims against Inland, estimated to aggregate approximately $5,550,519 at August 31, 1959.

3. Administrative claims, costs of administration, tax claims, workmen's compensation claims and sundry general claims against Inland will also be paid in full by the Trustees or the Reorganized Company.

4. Kentucky public creditors will receive the following shares of new common stock and rights to subscribe to such shares:

a. Each public holder of a $1,000 principal amount Kentucky Bond will receive 114 shares of new common stock and the right to subscribe to 25 shares of new common stock at $10 per share. As a class, the public holders of Kentucky Bonds will receive $2,549,720 par value of new common stock and the right to subscribe at par to $559,150 par value of new common stock.

b. Each public holder of a $1,000 principal amount Kentucky Debenture will receive 132 shares of new common stock and the right to subscribe to 25 shares of new common stock at $10 per share. As a class the public holders of Kentucky Debentures will receive $715,440 par value of new common stock and the right to subscribe to $135,500 par value of new common stock.

5. No other claims and no stock interests will participate in the reorganization.

Subject to the terms and conditions hereinafter set forth, we undertake as follows:

A. To purchase from Kentucky public creditors who receive new common stock under the Plan all or any

part of the shares they desire to sell to us at $10 per share;

B. To purchase at $10 per share all or any part of the total of 69,465 shares to which Kentucky public creditors do not subscribe;

C. To purchase at $10 per share 80,535 shares of new common stock; and

D. We shall also purchase at the rate of $10 per share any scrip which it is necessary to issue because a holder is not entitled to a full share, which scrip we shall promptly convert into full shares so far as possible. If any scrip remains outstanding we shall sell it to the Reorganized Company, upon request, at the rate of $10 per share.

The following are the terms and conditions of our undertaking:

(i) The Plan, as altered and modified in accordance with the annexed Alterations and Modifications, shall have been duly confirmed and the order of confirmation shall have become final and not subject to further appeal.

(ii) Within five days of the expiration of our undertaking, as provided below, we shall be notified of the number of shares of new common stock Kentucky public creditors desire to sell to us and the number of shares of new common stock for which they have not subscribed.

(iii) The shares of new common stock which we will be called upon to purchase pursuant to the aforesaid

notification shall be taken and paid for by us against delivery of certificates representing the appropriate number of shares of stock and there shall be delivered to us simultaneously certificates for 80,535 shares of new common stock for which we shall make payment as provided in paragraph C above.

(iv) There will be no substantial change in the assets and liabilities of the Debtors and their financial condition as shown in the Audit Reports as of December 31, 1958 prepared by Eskew, Gresham & Diersen, Certified Public Accountants, and filed in the Proceedings, except changes in the ordinary course of business.

(v) The Reorganized Company shall be a duly organized corporation vested with the properties of the Debtors as provided in the Plan.

(vi) There will be no changes, amendments, alterations or modifications of the Plan, except those contained in the annexed Alterations and Modifications, without our consent.

(vii) All corporate and court proceedings and documents in connection with the consummation of the Plan as Amended and Modified, including the issuance of the new common stock and the form and terms of the certificate of incorporation and the by-laws of the Reorganized Company, shall be subject to approval of our counsel.

(viii) All consents, agreements and approvals by us or our counsel shall be in writing.

(ix) We shall receive as underwriting expenses a sum equal to 10 cents per share on each share of new

common stock as to which our undertaking extends pursuant to paragraphs A and B above. We have been advised by certain holders of Kentucky Bonds and Debentures that they will retain and not sell to us the shares of new common stock and that they will exercise their rights to subscribe to shares of new common stock; such shares, which are estimated to aggregate approximately 145,000 shares, will not be included in calculating our underwriting expenses of 10 cents per share. The aggregate of our underwriting expenses shall be an expense of administration and shall be assumed and paid by the Reorganized Company.

We represent to you that our purchases of new common stock, and those of any person participating with us in the purchases, will be made for purposes of investment and not for public distribution. Our undertaking herein is with the understanding, however, that in the event that future resales of the new common stock by us or by any persons participating with us in the purchase should in the opinion of our counsel require registration under the Securities Act of 1933 and/or qualification under any state blue sky law, the Reorganized Company will undertake to effect the necessary registration and/or qualification of the new common stock for such purpose and pay the expenses pertaining thereto.

To secure our undertaking, we have transmitted to Mr. Ben Williamson, Jr., Trustee of Inland Gas Corporation, the sum of $50,000, which is to be applied on account of our purchase of new common stock or promptly returned to us in the event that the Amended and Modified Plan is not approved, not accepted, not confirmed or not consummated.

We understand that the proposed Alterations and Modifications can not be effected without compliance with the provisions of Chapter X of the Bankruptcy Act relating to approval, acceptance, confirmation and consummation. However, in view of the size of the commitment undertaken by us, we must place a limitation upon its duration. Accordingly, our undertaking hereunder will terminate unless the shares of new common stock which we are required to purchase are delivered to us against payment on or before August 31, 1959, or such later date as we shall fix in our sole discretion, and upon such termination our deposit shall be returned to us.

Very truly yours,

DEMPSEY & COMPANY

By JOSEPH E. DEMPSEY
President

H. M. BYLLESBY AND COMPANY, INC.

By A. S. BOWES
Vice Chairman of the Board